The Solicitors' Journal

VOL. LXXXII. **Saturday, November 26, 1938.** No. 48

Editorial, Publishing and Advertisement Offices: 29–31, Breams Buildings, London, E.C.4. Telephone: Holborn 1853.
SUBSCRIPTIONS: Orders may be sent to any newsagent in town or country, or, if preferred, direct to the above address.
Annual Subscription: £2 12s., *post free*, payable yearly, half-yearly, or quarterly, in advance. *Single Copy:* 1s. 1d. *post free.*
CONTRIBUTIONS: Contributions are cordially invited, and must be accompanied by the name and address of the author (not necessarily for publication) and be addressed to The Editor at the above address.
ADVERTISEMENTS: Advertisements must be received not later than 1 p.m. Thursday, and be addressed to The Manager at the above address.

Current Topics.

Scots Marriage Law.

WHEN, rather more than a century ago, certain proposals for the reform of Scots law and procedure came up for discussion before the Faculty of Advocates, it is recorded that WALTER SCOTT, not yet Sir WALTER made a speech longer than he had ever previously delivered, strongly deprecating the suggested changes. When playfully twitted by some of his confrères, he declared with emotion, and with tears in his eyes, that "little by little, whatever your wishes may be, you will destroy and undermine, until nothing of what makes Scotland Scotland shall remain." Whether, if Sir WALTER were alive to-day, he would be as emotional on the proposed reform of the marriage law of Scotland it is impossible to say with certainty, but few we imagine will be found objecting to the reforms embodied in the Bill, sponsored by LORD STRATHCONA AND MOUNT ROYAL, entitled "An Act to amend the law relating to marriage in Scotland." which proposes to abolish what are known as irregular marriages. These may be constituted in a variety of ways, namely, (A) by declaration *de presenti*, that is, the consent by the two parties to present marriage; (B) by promise of marriage followed by intercourse; (C) by what is called habit and repute, the repute being general and consistent as to leave no substantial doubt. With regard to this latter mode, it has been decided that the fact that at the outset the cohabitation was adulterous is not fatal to the constitution of the marriage by continuance of the cohabitation with repute after the parties become free to marry. Apart altogether from the moral aspect of the question, one grave objection to irregular marriages has often been the evidential difficulty of establishing them in fact. This difficulty will be entirely obviated if the Bill referred to becomes an Act, for it provides for those not desiring the ceremony being performed by a clergyman after publication of banns or notice, civil marriage before a registrar such as has long been available in England.

The Law Versified.

A FORMER very learned and witty judge of the Court of Session, LORD NEAVES, who had a happy knack of turning out amusing verses on topics seemingly the most unsuitable for lyrical treatment, turned his attention to the peculiarities of the marriage law of his country. To show that, in whatever form it might find expression, consent is of the essence of the contract, he penned his "Tourist's Matrimonial Guide through Scotland," which contains the following stanza:

> "Suppose the man only has spoken,
> The woman just giving a nod:
> They're spliced by that very same token
> Till one of them's under the sod.
> Though words would be bolder and blunter,
> The want of them isn't a flaw;
> For *nutu signisque loquunter*
> Is good consistorial law."

A generation ago, it may be recalled, the late Mr. ROBERT CAMPBELL, who was a member both of the Scots and English bars, was frequently called as an expert witness in the Divorce Court on the Scots law of marriage, and he was accustomed to cite as one of his "authorities" the witty lines of LORD NEAVES above set out as truly and accurately stating the law of Scotland on the subject of irregular marriage.

The Punishment of Offenders.

IN our last issue we expressed the hope that in its ultimate form the Criminal Justice Bill would preserve the balance of what is due to the offender on the one hand and to the rest of the community on the other. A letter published in Tuesday's *Times* from Sir ARTHUR GREER, who, as he himself says, earned, while performing his duties at criminal trials, the reputation of an exceptionally lenient judge, deals with an aspect of the question which appears to be in some danger of being overlooked. Punishment, it is urged, must be adequate to satisfy public indignation with regard to the serious character of the crime. The aim of punishment is not merely to deter the criminal who has been brought to justice from repeating his criminal acts, but to deter others who might feel inclined to similar criminal acts from the temptation to engage in them. So far as is consistent with justice, and maintaining the deterrent effect of punishment to reform the criminal, the most important object of punishment is to deter others from adopting a criminal career. The letter continues: "To deter the criminal who is, in fact, brought to justice from repeating his offences is a secondary consideration, and to bring about his reform and make him an honest citizen again is also a less important consideration. It is very

rare that a man who is accused before the courts is, if his history had been known, a first offender. I have every sympathy with the desire to treat those who are really first offenders leniently and to give them another chance, but no one who is acquainted with criminal records can fail to know that in many cases a criminal is not caught until after he has committed a great many serious crimes." The letter states that there is a very real danger, if all the suggestions that have been made for the improvement of the condition of prisoners in custody are adopted, that the criminal classes will regard prison as a reward rather than as a punishment. In many cases, it is said, a prisoner in gaol would be much better off than in the unsatisfactory conditions in which he had led his life out of prison. The late learned judge's experience has satisfied him that crime is not a disease, and that the criminal classes mainly consist of ordinary citizens who have fallen into and given way to temptation. It appears to us that much loose thinking on this question is derived from a confusion between the work of the reformer and that involved in the administration of justice, the objects of which are not primarily reformative. It is unnecessary to decide which is the greater, or ultimately the more fruitful, work, but appropriate methods of treating offenders should be determined mainly in light of those considerations which render the criminal courts a present necessity.

The Prevention of Fraud (Investments) Bill.

THE Prevention of Fraud (Investments) Bill was read a second time in the House of Commons on Monday, the money resolution in connection with the measure being agreed to in committee. In our last issue we gave some particulars relative to the changes introduced into the measure since it was first printed as a result of its examination by those concerned. In moving the second reading Mr. OLIVER STANLEY, President of the Board of Trade, said that he could give the House an assurance that when the Bill reached committee every one on that committee would have one common object, namely, to make the measure as effective as possible in dealing with the rogue and to make it as little hampering as possible in dealing with the honest man; and he said that he would be prepared to accept any help from any quarter which tended to improve the Bill and strengthen its effect. The peculiar difficulty of drafting an effective but not oppressive measure lies in the fact to which attention was drawn by Mr. STANLEY that the difference between "share-pushing" and ordinary legitimate share dealing lies not so much in the act done as the intention of the doer. It was, he said, quite possible in legitimate, above-board share dealing transactions for the purchaser to lose his money, but the difference was that in share-pushing activities there was neither belief, intention or hope that the purchaser would ever do anything else. Tribute was paid to the valuable report of the Bodkin Committee, reasons being given from departing to some extent from its recommendations and for the proposal contained in the measure for the introduction, not of a system of automatic registration of dealers in stocks and shares, but of the more flexible system of licensing by the Board of Trade. Clause 10 was stated to be the answer to the request of the Bodkin Committee that something should be done to extend the definition of false pretences under the Larceny Act. Under that Act, it was intimated, false pretences must consist of a statement about existing facts, but the real false pretence of the share-pusher's canvasser was not in what he said about existing facts, but what he said about the future. Under the new definition either a false or reckless promise or forecast might equally be a cause of conviction. Mr. W. P. SPENS, K.C., who agreed that a system of licensing was, in the circumstances, necessary and that a Department of the Executive should lay down rules and regulations affecting licences, suggested that appeals should go, not to a special tribunal created for the purpose, but to the courts.

Finance Act, 1938, and Public Assistance.

SECTION 21 of the Finance Act, 1938, provides that if any person proves that during any year of assessment he has a relative living with him (*a*) who in that year has been denied, wholly or in part, any unemployment allowance under Pt. II of the Unemployment Act, 1934, or public assistance, on the ground that the relative was being maintained wholly or partly by him, and (*b*) in respect of whom he is entitled to no deduction for that year, under s. 22 of the Finance Act, 1920, he shall be entitled to a deduction from the amount of income tax with which he is chargeable for that year equal to tax at the standard rate on the amount deemed to have been paid by him in that year towards such maintenance but not exceeding tax on £25. A recent circular (No. 1746) issued by the Ministry of Health intimates that the Board of Inland Revenue considers it to be desirable that uniform arrangements should be made for establishing the essential facts so far as the question of denial of public assistance is concerned, and has accordingly suggested a procedure whereby a claimant, on intimating his claim to income tax allowance under the foregoing section, should be asked to apply to the public assistance authority, on a form supplied to him by H.M. Inspector of Taxes, for a certificate of the pertinent facts, at the same time requesting the said authority to forward the certificate direct to the Inspector. The form of request and certificate is printed as an appendix to the circular. The Minister expresses concurrence in the procedure suggested and trusts that county councils and county borough councils and their officers will assist the Board of Inland Revenue to establish the facts on claims made under the said section by co-operating with the Board in the manner proposed.

Highway Administration.

SIR CHARLES BRESSEY, in his presidential inaugural address to the Chartered Surveyors' Institution, recently made some interesting observations with reference to the problems of highway planning. He was immediately concerned with these problems as they affect Greater London, which was, of course, the subject of his report, but much of what was said might well be applied to the country as a whole, though the process of placing highway management in the hands of the larger local government units exemplified, for example, by the Local Government Act, 1929, and directly under the Ministry of Transport by the Trunk Roads Act, has done much to mitigate the evils of which the speaker complained—to say nothing of the greater urgency of the problem in London by reason of the circumstances there prevailing. Sir CHARLES questioned whether any substantial progress could be made without the setting up of a much simpler, more direct, *ad hoc* organisation, immune from the vexatious delays that must always attach to the deliberations of heterogeneous groups of local bodies, and he urged that the delays and uncertainties inherent in this procedure were apt to lead, not merely to increased outlay, but also to a grave loss of efficiency, owing to the direct course of a new road as originally designed having been thwarted by obstructive developments. He suggested that any report formulated on a broad regional basis was likely at best to meet with approval in general and rejection in detail, everyone agreeing that comprehensive measures were essential, but no public body being prepared to take the initiative, or to accept any scheme that appeared to be of doubtful benefit to its particular locality. He stated that in many areas on the outskirts of London, estate development had reached a stage at which the last available "corridors" for new routes would soon be closed by streets and buildings, and urged that, if valid arguments could be advanced against the actual building of roads in present circumstances, no objection could well be taken to safeguarding their course, so that, in the event of a trade recession, profitable scope might at once be available for public works.

An Improvement Trust.

REFERENCE was made to the Road Improvement Funds Act, 1909, as indicative of misgivings felt nearly thirty years ago as to the possibility of applying the normal machinery of local government to the creation of new routes, and it was recalled that a Road Board of five members was established under the Act and empowered "to construct and maintain any new roads." No advantage had been taken of those powers either by the Road Board or by its successor, the Ministry of Transport. The policy of making grants to local authorities and leaving the control in their hands had been sedulously maintained in the letter, if not in the spirit, the grants from the Government's Road Fund having, in certain instances, approached the 100 per cent. mark. The problem now to be faced, it was intimated, was not merely the cutting of new routes, but the replanning to the public advantage of the areas lying within the "zone of influence" of each route, and it was suggested that such duties could probably be most suitably performed by an Improvement Trust with few members but with ample powers to undertake the safeguarding and construction of new routes, and the acquisition of adjoining territory, with a view to securing recoupment by redevelopment on the most enlightened principles. Such a suggestion would involve a revival for the purposes in view of the *ad hoc* authority and, to this extent, the reversal of the process exemplified in local government legislation for the past hundred years. But there exists a precedent in the authorities created by the Land Drainage Act, 1930, to deal with problems which arise independently of considerations in light of which ordinary local government boundaries are fixed. The special problems involved in the planning of London highways may well be regarded as sharing this characteristic, though the difficulties of so defining the functions of such a body as to bring about an efficient and harmonious co-operation between it and the existing authorities—particularly those concerned with highways and planning—would seem to be considerable.

Road Accidents: A Lancashire Experiment.

THE recent debate in the House of Commons on road accidents was not productive of any new proposal of particular moment for the reduction of road casualties, though it drew from the Minister of Transport an account of the success which has accompanied certain measures which have recently been taken in Lancashire. The motion was: "That this House views with concern the continued high rate of road accidents in spite of existing measures, and, therefore, calls for more effective action for the public safety." Mr. BURGIN, who advised the House that the motion should be accepted, urged that the remedy was not a one-man job, nor a one-department job. The greatest individual cause of casualties on the roads was lack of care, lack of consideration, selfishness. The remedy was not so much in altering the road system as in endeavouring to alter the standard of conduct on the roads. The Minister went on to describe the measures above alluded to. The Chief Constable of Lancashire, he said, had been trying a most interesting experiment—by using a large number of mobile police, by increasing the number of cautions and diminishing the number of prosecutions, by establishing a code of good conduct—which had had a most startling effect. For the six months ended 30th September, when the average reduction in accidents for the whole country was five per cent., in Lancashire it was forty-six per cent. Moreover, it was said, by a concentration on one road where the accidents were very bad, the Chief Constable had reduced the number by seventy-three per cent. These figures suggest that a good deal more might with advantage be done in the same direction, for we doubt whether the adoption of any of the safety measures familiar to road users—admirable as many of them have proved to be in practice—has been attended by equally remarkable results.

Recent Decisions.

IN *Caxton Publishing Co., Ltd.* v. *Sutherland Publishing Co., Ltd.* (*The Times*, 18th November), the House of Lords held (i) that the remedies of damages for infringement of copyright and damages for conversion, provided respectively by ss. 6 and 7 of the Copyright Act, 1911, were cumulative and not alternative: (2) that the limit of three years provided by s. 10 of that Act applied to a claim in respect of conversion under s. 7, as well as to a claim under s. 6; (3) that the conversion consisted in the order for binding the infringing matter so as to incorporate it with the remainder of the published work; and (4) that the proper method of determining the value of the portion so incorporated was to take the selling price of the whole volume, find what proportion belonged to the owners of the copyright, and after making due allowance for the binding to divide the total price by that proportion and multiply it by the number of copies sold. On the first point, a decision of the Court of Appeal reversing that of FARWELL, J., was affirmed. On the second and third, decisions of CROSSMAN, J., which had been reversed by the Court of Appeal, were restored, and on the fourth, the decision of CROSSMAN, J., which had been affirmed by the Court of Appeal, was upheld.

In *Re Sanger; Taylor* v. *North* (p. 950 of this issue), SIMONDS, J., held that the order of application of the assets of a deceased person's estate prescribed by s. 34 (3) of the Administration of Estates Act, 1925, and Pt. II of the First Schedule thereto applied where a testatrix gave the residue of her estate, after the payment of certain legacies, on trust for sale and to divide the proceeds equally between five named legatees, two of whom predeceased her, notwithstanding a direction to discharge "all duties payable on my death . . . out of my estate." The estate duty on the testatrix's personal estate, the legacy duty on the lapsed legacies, and the legacy duty on the residuary estate, including the lapsed legacies, were accordingly to be paid out of the two lapsed shares of residue as "property undisposed of by will." *Re Kempthorne* [1930] 1 Ch. 268 and *Re Tong* [1931] 1 Ch. 202, distinguished.

In *Goldblum* v. *Goldblum* (*The Times*, 22nd November), the Court of Appeal (Sir WILFRID GREENE, M.R., and SCOTT and CLAUSON, L.JJ.) upheld a decision of HENN COLLINS, J., to the effect that a separation deed entered into between husband and wife prior to the coming into force of the Matrimonial Causes Act, 1937, which was followed by the wife's petition for judicial separation on grounds of alleged cruelty being dismissed at her request, did not in the circumstances preclude the wife from relying on the charges of cruelty made in that petition to support a petition for divorce, subsequent to the said Act. The husband's summons, calling upon the wife to show cause why her petition for divorce should not be dismissed, was accordingly dismissed.

In *Shenton* v. *Tyler* (p. 950 of this issue), SIMONDS, J., held that the plaintiff was not entitled to administer to the defendant interrogatories relating to communications between the defendant and her late husband, on the ground that such communications were protected by the common law of inviolability of any confidence passing between husband and wife.

In *Brisco* v. *Matthew* (*The Times*, 23rd November), which was tried before LORD HEWART, C.J., and a special jury, the plaintiff was awarded £100 damages for libel contained in a document sent by the defendant to every member of the executive council of the National Equine Defence League alleging that the plaintiff (who was organising secretary of the league) improperly kept an electrocutor for the painless killing of dogs in such a dirty and defective condition that its use would cause torture to the animal, and £200 damages for slander by repetition of the same allegations at a public meeting. The jury found that the words were not true and that they had been written and spoken maliciously.

Criminal Law and Practice.

CHILDREN AND CRIMINAL INTENT.

THE recent trial at the Central Criminal Court of a schoolboy aged thirteen on a charge of murder raises the interesting question of the age which an accused person must have reached before he can be said to have been capable of the necessary criminal intent in order to be found guilty of a crime (*The Times*, 18th November).

Counsel for the defence submitted at the end of the case for the prosecution that there had been no evidence to rebut the presumption that a boy under fourteen was incapable of sufficient evil intent to commit a crime, and suggested that there was a question of manslaughter. In reply to Mr. Justice Asquith's question as to whether he could conceive a verdict of manslaughter on the evidence, counsel said that he could, as, while it would clearly be murder in the case of an adult, if the jury were not satisfied that the boy expected death or grievous bodily harm to follow his action, but thought he knew it was an illegal act, the jury might return a verdict of manslaughter.

Another proposition put forward by counsel for the defence was: "A child under eight cannot commit a crime according to our law. From the age of eight to fourteen the law assumes that a child cannot have the necessary criminal intention which would justify a jury in finding him guilty of a crime, but evidence of abnormality takes him out of this rule."

With regard to the defence, the judge said that a lot had been said that the accused must be shown to be an abnormal boy, but that that was not quite the way the principle should be applied. The true question was: Did he know that what he was doing was seriously and gravely wrong? The learned judge directed the jury that as a matter of law there were no facts in the case which would justify a verdict of manslaughter. After an absence of $1\frac{3}{4}$ hours the jury returned a verdict of not guilty.

It is stated in *Reniger* v. *Fogossa*, 1 Plowd. 19: "If an infant of tender age kills a man, it shall not be felony, because he has not . . . understanding; for which reason the law imputes it to his ignorance, which is natural to everyone at that age, and so there is no fault in him." A note adds: "By the best opinions this seems only applicable to an infant of seven years old, who cannot be guilty of felony, whatever circumstances proving discretion may appear, for *ex presumptione juris* he cannot have discretion, and no averment shall be received against that presumption. But if he be above seven years old, and under fourteen, though *primâ facie* he is to be judged not guilty, yet if it appear by strong circumstances and pregnant evidence, that he had discretion to judge between good and evil, judgment of death may be given against him." The learned annotator cited a case where judgment of death was given against a boy of nine years old, and also a precedent of a pardon granted to an infant under seven years old, who was indicted for homicide.

Since the Children and Young Persons Act, 1933 (s. 50), it is conclusively presumed that a child under the age of eight years cannot be guilty of any offence.

There is a presumption that a child between the ages of eight years and fourteen years cannot possess criminal intent, but this presumption may be rebutted by evidence as to "the strength of the delinquent's understanding and judgment" (4 Bl. Com. 23). There are in the reports a number of eighteenth century cases in which the death penalty was meted out to children of tender years. In *Dean's Case*, 1 Hale 25, note *u*, a child of eight was executed for burning two barns, and in *Alice de Waldeborough's Case*, 1 Hale 26, a girl of thirteen was executed for murder.

The questions for the jury in all cases where children of between the ages of eight and fourteen are charged are (1) whether the child committed the criminal act, and (2) whether, if the answer is in the affirmative, he had guilty knowledge that he was doing wrong (*R.* v. *Owen*, 4 C. & P. 236). In summing up in a modern case where a child of thirteen was charged with murder, Mr. Justice Bucknill said that the commission of a crime was in itself no evidence whatever of the guilty state of mind which was essential before a child between the ages of seven and fourteen could be condemned (*R.* v. *Kershaw*, 18 T.L.R. 357, 358).

It is a little difficult to see how evidence of abnormality can be a relevant consideration in the trial of cases of this sort unless the plea of guilty but insane is put forward on behalf of the accused. The defence in the recent case at the Central Criminal Court seemed to rely on the fact that there was no evidence of abnormality on the part of the accused, but, as has been stated above, the onus is on the prosecution to prove, not abnormality, but guilty knowledge, and that evidence must be clear and beyond all possibility of doubt (*R.* v. *Vamplew*, 3 F. & F. 520). Possibly the suggestion was that some abnormal viciousness must be shown by the prosecution as evidence of criminal intent.

It should be added, as counsel for the defence pointed out at the Central Criminal Court after the jury's verdict of "not guilty," that there are powers under the Children and Young Persons Act, 1933, to deal with the case and there were sufficient grounds to bring the boy before a juvenile court, where an order could be made for his future care and supervision. It is a pity that these powers cannot be invoked in the first place to save children of tender years from the ordeal of a solemn criminal trial.

Defective Articles of Food in Sealed Containers: Burden of Proof.

THE case of *Daniels and Wife* v. *R. White & Sons, Ltd., and Another*, 82 SOL. J. 912, which came before Lewis, J., on the 3rd November, reveals an important point and one which is bound sooner or later to arise for judicial clarification. The first plaintiff in the case purchased from the second defendant at her licensed premises a bottle of lemonade made by the first defendants. It was a hot day, and he and his wife, the second plaintiff, were both thirsty, with the result that each drank a quantity of the lemonade before realising that it contained a foreign substance—which subsequently, on analysis, turned out to be carbolic acid. Husband and wife sued the defendant company for damages for negligence as manufacturers of the lemonade, and the husband, as purchaser, sued the licensee of the public-house for breach of warranty—a claim on which nothing turns, although in the event it was the only claim which succeeded. The plaintiffs having proved that the bottle of lemonade was received with its seal unbroken, that a substantial quantity of carbolic acid was present in its contents, and that they had been taken ill and suffered injury, counsel for the defendant company submitted that he had no case to answer, since the evidence adduced for the plaintiffs, he contended, fell short of discharging the onus lying on them of proving that the defendant company had been guilty of negligence in allowing carbolic acid to be present in that particular bottle. Counsel for the plaintiffs submitted in reply that, the plaintiffs having received the bottle with its seal unbroken, it was to be assumed that it was, when purchased, in the condition in which it had been on leaving the company's factory, that it was a case of *res ipsa loquitur*, and that it was accordingly for the company to prove that they had taken reasonable care to ensure the purity of the contents of the bottle.

The argument for the company was based principally on the concluding paragraph of Lord Macmillan's speech in *Donoghue* v. *Stevenson* [1932] A.C. 562, at p. 622. The simple facts of that case, which are really too familiar to need recital, were that the plaintiff, having drunk a quantity of

ginger beer from a sealed bottle of that liquid manufactured by the defendant, then saw a decomposed snail float out of the bottle into the glass of a friend who was also partaking of the ginger beer. She claimed damages from the manufacturer for the illness and shock which she suffered as a result of that experience, and the case reached the House of Lords solely on the question whether on any view of the facts there was a cause of action against a manufacturer in those circumstances. The House decided that " the manufacturer of an article of food, medicine, or the like, sold by him to a distributor in circumstances which prevent the distributor or the ultimate purchaser or consumer from discovering by inspection any defect, is under a legal duty to the ultimate purchaser or consumer to take reasonable care that the article is free from defect likely to cause injury to health." On that holding, that the pleadings disclosed a relevant cause of action, the case was remitted to the lower court for determination of the facts.

At the end of his speech, concurring in that decision, Lord Macmillan is reported as having uttered the following words, on which counsel for the manufacturers in the case under consideration strongly relied : " The burden of proof must always lie upon the injured party to establish that the defect which caused the injury was present in the article when it left the hands of the party whom he sues, that the defect was occasioned by the carelessness of that party, and that the circumstances are such as to cast upon the defender a duty to take care not to injure the pursuer. There is no presumption of negligence in a case such as the present, nor is there any justification for applying the maxim *res ipsa loquitur*. Negligence must be both averred and proved."

Counsel for the plaintiff argued that that passage must be read in the light of a passage just preceding it, which is as follows : " I can readily conceive that where a manufacturer has parted with his product and it has passed into other hands it may well be exposed to vicissitudes which may render it defective or noxious, for which the manufacturer could not in any view be held to blame. It may be a good general rule to regard responsibility as ceasing when control ceases. So, also, where between the manufacturer and the user there is interposed a party who has the means and opportunity of examining the manufacturer's product before he re-issues it to the actual user. But where, as in the present case, the article of consumption is so prepared as to be intended to reach the consumer in the condition in which it leaves the manufacturer, and the manufacturer takes steps to ensure this by sealing or otherwise closing the container so that the contents cannot be tampered with, I regard this control as remaining effective until the article reaches the consumer and the container is opened by him."

That second passage would appear to be susceptible of the following analysis : First, it necessarily postulates what must be indisputable—namely, that, if the contents of a container are found to be defective on the opening of the container by the consumer, the defect must have been caused either by the manufacturer or by some intermediate " other hands." Sealing apart, therefore, the manufacturer's responsibility ceases, and that of possible " other hands " begins, when the container passes out of the manufacturer's control. But, it seems, if the container leaves the manufacturer under seal, that control is to be extended and remain effective, and, presumably, the responsibility of intermediate " other hands " to be excluded, until the container is opened by the consumer. The possibility of intermediate tampering being excluded by the presence of the unbroken seal, it follows that the defective condition of the contents must be attributed to the only other possible cause as postulated : the fault of the manufacturer. If that analysis of the earlier passage be correct, it seems difficult to reconcile with the plain terms of the later passage with which Lord Macmillan concluded his speech ; and in the course of the discussion in the case under consideration considerable doubt on the matter was expressed. It was further argued that, *Donoghue* v. *Stevenson* being before the House only on a preliminary point of pleading and not on its facts, Lord Macmillan's remarks were, strictly regarded, *obiter*. Lewis, J., in expressing his own doubts as to the meaning to be attributed to the reported utterances of that high authority, said that he was absolved from deciding that difficult question, and, consequently, the question of the burden of proof in the case before him, because he found that, even if the burden of proof were held to have been shifted on to the defendant manufacturers, they had satisfied him that they had discharged their duty to take reasonable care.

Lord Macmillan, in the later of the two passages cited, is reported as placing two duties on the injured party. The former, that of establishing that the defect was present in the article when it left the manufacturer's hands, is the one more difficult to reconcile with the previous passage in his speech ; the latter, that of showing that the defect was occasioned by the carelessness of the manufacturer, is less apparently contradictory and also less difficult to perform. But, in any event, it is hard to exaggerate the difficulty which, in the light of Lord Macmillan's words as reported, must confront a purchaser who, in all innocence and protected by an unbroken seal, confidently consumes some product which he has had no opportunity of examining, then to find that he has been injured by the presence in what he has consumed of some foreign substance. In endeavouring to fulfil his second duty he can at least confine himself to the premises where the article is manufactured. The first duty imposes upon him the duty of discovering and then questioning everyone of possibly several persons through whose hands the article has passed between the time of leaving the manufacturer and reaching him. It may be asked how many injured consumers would have the courage, even if they had the means, to embark on such a task, and, further, whether the presence of a seal on the container is of much protection, even when, as in the case of some delicate products, the sealing is not merely a strip of paper, but hermetic. It appears that any consumer who, relying on an unbroken seal, thinks in all common sense that he has a clear case against a manufacturer in negligence, is liable, as things stand at present, to be sadly disillusioned.

The Law as to Fire Protection.

THE Fire Brigades Act, 1938 (1 & 2 Geo. VI. c. 72), which received the Royal Assent on the 29th July, 1938, is of importance to every one of His Majesty's lieges. It affects him in a two fold manner, hypothetically and practically. The former inasmuch as he never knows when he may require the services of the fire-fighting authority, and the latter beyond all shadow of doubt as a taxpayer and ratepayer called upon to assist in footing the bill. It has long been felt that the law relating to fire protection needed modernising in the light of present-day requirements. Prior to this Act, surprising as it may seem, there was no obligation on any local authority (except the London County Council) to make any fire brigade provision, either by maintaining a fire brigade of its own or by co-operating in the maintenance of a fire brigade. Under this Act they are, for the first time, placed under a statutory obligation to make such provision. A Departmental Committee under the chairmanship of Lord Riverdale was appointed by the Home Secretary in 1935 to consider the subject, and the provisions of the new Act are based in large measure on the main recommendations of this Committee.

Sections 1 and 2 may be regarded as the most important operative provisions of the Act ; the former dealing with the provision of " fire services," and the latter with water supply in case of fire.

Under s. 1 the council of every county borough, non-county borough, urban and rural district is constituted a "fire authority" and required to make provision for the extinction of fire and the protection of life and property in case of fire. These requirements include (*a*) securing the services of an efficient fire brigade either by providing and maintaining a fire brigade themselves or entering into arrangements for such services with other fire authorities or persons; (*b*) providing and housing fire engines, appliances and equipment (including the housing of members of the brigade); (*c*) making efficient arrangements for calling the fire brigade in case of fire and the maintenance of street fire alarms; (*d*) making arrangements with other fire authorities for mutual assistance in dealing with fires which cannot be adequately dealt with by their own fire services.

As to water supply. Fire authorities are allowed to use for fire extinction purposes the water from the mains of statutory water undertakers without charge (Waterworks Clauses Act, 1847, s. 42). They are also authorised by the new Act to use any convenient or suitable supply subject to the payment of reasonable compensation (s. 2, sub-s. (7)). Moreover, by sub-s. (6) of the same section they are empowered to enter into agreements with any water company or person for securing the provision for their borough or district of an adequate supply of water in case of fire. They are further required to take all reasonable and practicable steps to improve the access to or otherwise facilitate the use of any water supply (other than supplies by fire hydrants) which may be required for extinguishing fires: s. 2, sub-s. (8). This may be of great importance in rural districts where a pressure supply may not be available.

Sub-sections (1) and (2) of s. 2 of the Act extend to all districts the existing law regarding the provision of fire hydrants by urban authorities, and the provisions of ss. 38, 39, 40 and 43 of the Waterworks Clauses Act, 1847 are incorporated and applied to fire authorities. The effect of the above provisions is, that fire hydrants are to be fixed on water mains at distances of not more than 100 yards apart (unless some other distance is prescribed), but the Minister of Health is empowered by Order to extend the distances in rural districts. These hydrants are to be provided and maintained at the expense of the fire authority, and their situations plainly indicated by a notice or distinguishing mark which may be placed on any wall or fence adjoining a street or public place. Water undertakers are liable to penalties under s. 43 of the Waterworks Clauses Act, 1847, for neglecting or refusing (unless prevented by frost, unusual drought, or other unavoidable cause or accident or during necessary repairs) to fix, maintain or repair fire hydrants or to keep their mains charged with water at the specified pressure. The pressure is laid down by s. 35 of the Act of 1847, viz., such a pressure as will make the water reach the top storey of the highest houses within the district, "unless it is provided by the Special Act that the water to be supplied by the undertakers need not be constantly laid on under pressure." The Special Acts of many water undertakers do contain provisions dealing with pressure as regards their particular undertaking.

Sub-sections (3) and (4) of s. 2 are entirely new law. The former relieves a fire authority from liability for repairs, etc., where hydrants have been damaged by use (otherwise than for fire brigade purposes) by persons using them with the water undertakers' consent; while the latter makes it a summary offence punishable by fine where any person damages or obstructs any fire hydrant otherwise than in consequence of its use for extinguishing fires, or fire brigade purpose, or any purpose authorised by the water undertakers.

Another important provision is contained in s. 3. It confers power on fire authorities to require persons proposing to instal new waterworks to construct the works in such a manner as regards material, size and situation of pipes, pressure of water, provision for storage, etc., as may be specified for the purpose of securing the best practicable supply of water in case of fire. The person proposing to undertake such works must give at least fourteen days' notice to the fire authority, who may within fourteen days require additional provision to be made for fire-fighting purposes, the fire authority contributing towards the extra cost incurred. An aggrieved undertaker is given a right of appeal to the Minister of Health within twenty-eight days. Disputes regarding payment for the additional works and for repairs and maintenance are to be determined by an arbitrator appointed by the Minister of Health. A person carrying out works otherwise than in accordance with the requirements of a fire authority is liable on summary conviction to a fine of £50. The court may also order the steps to be taken for remedying matters and a failure to comply therewith renders the offender liable to a daily penalty of £5.

Company Law and Practice.

Prospectuses Issued before the Incorporation of a Company. II.

Last week I discussed in this column the possibility of obtaining rescission of a contract to take shares in a company on the ground of the representations made prior to the incorporation of the company, and in particular I dealt at some length with *Karberg's Case* [1892] 3 Ch. 1, which, as I pointed out, is by no means an easy case to understand. This week I propose to deal with some subsequent cases on similar questions and endeavour to ascertain what the present state of the law is in this connection. As some of my readers may remember, in *Karberg's Case* the plaintiff was held entitled to have his name removed from the register of a company where he had established that he had subscribed for shares in the company on the basis of misrepresentations contained in a prospectus issued by the promoter prior to the incorporation of the company.

The next case in point of time on this topic which I intend to discuss was *Re Canadian* (*Direct*) *Meat Co.* [1892] W.N. 94. In this case two underwriters, Tamplin and Champion, saw and relied on a draft prospectus issued prior to the incorporation of the company. The draft prospectus contained misrepresentations and on discovering these both underwriters applied to have their names removed from the register of the company. Tamplin never read the company's prospectus so as to understand it, but thought it was the same as the draft prospectus. Champion, however, without reading the company's prospectus glanced through it with sufficient care to satisfy himself that it substantially repeated the statements in the draft prospectus. In these circumstances Romer, J., held that Tamplin, having acted only on the draft prospectus and not on any document issued by the company, could not succeed, but that Champion was entitled to have his name removed from the register. Tamplin appealed and the report of the judgment of the Court of Appeal [1892] W.N. 146, is as follows: "The court (Lindley, Bowen and A. L. Smith, L.JJ.) held that the case was covered by *Metropolitan Coal Consumers Association* (*Karberg's Case*), and allowed the appeal." It is plain that thus no light can be thrown on the view which that Court of Appeal took of the ground of the decision in *Karberg's Case*, and in a subsequent case Luxmoore, J., has said that he was bound to proceed on the footing that the case was wrongly reported.

In the case of *Lynde* v. *Anglo-Italian Hemp Spinning Co.* [1896] 1 Ch. 178, Romer, J., laid down the following proposition: In order to make a company liable for misrepresentation inducing a contract to take shares from it the shareholder must bring his case under one of the following heads: "(1) Where the misrepresentations are made by the

directors or other the general agents of the company entitled to act and acting on its behalf; (2) where the misrepresentations are made by a special agent of the company while acting within the scope of his authority, including the case of a person constituted agent by subsequent adoption of his acts; (3) where the company can be held affected before the contract is complete with the knowledge that it is induced by misrepresentations; (4) where the contract is made on the basis of certain representations whether particulars of those representations were known to the company or not and it turns out that some of those representations were material and untrue—as, for example, if the directors of the company knew when allotting that an application for shares is based on the statements contained in a prospectus, even though that prospectus was issued without the authority or even before the company was formed, and even if its contents are not known to the directors." The first three of these heads are taken from the headnote to the report of the case, but the fourth is taken from the report of the judgment, for, according to "Buckley," it is wrongly stated in the headnote and the learned judge must have meant by the words "made on the basis," "made to the knowledge of the company on the basis." Luxmoore, J., has held that this is the correct interpretation of the judgment in *Collins* v. *Associated Greyhound Racecourses, Ltd.* [1930] 1 Ch. 1. In his judgment Romer, J., then goes on to say that *Karberg's Case* was one falling within the fourth head. This therefore means in the light of the note in "Buckley" above referred to, that Karberg was only entitled to succeed in his application because the company knew when they received his application that it was made on the basis of the pre-incorporation prospectus. There was, however, as I pointed out last week, no reference in the application form sent in by Karberg to any prospectus, and there is nothing in the report to show that the company did in fact know he was making the application on the basis of the draft prospectus. Indeed, Kekewich, J., at the trial in that case says: "The company received from Mr. Karberg an application for shares independently of any prospectus; it is not shown that they even knew that he had made the application on the faith of the prospectus or even that he had received any prospectus at all." It seems, therefore, that if the note in "Buckley" is correct as to the way in which the head-note in *Lynde* v. *Anglo-Italian Hemp Spinning Co.* should be altered, then the statement by Romer, J., that *Karberg's Case* came within the fourth head becomes demonstrably false. A further difficulty arises from a passage later on in the judgment, where Romer, J., says: "And lastly this is not a case like *Karberg's Case* or coming at all within the fourth head. The application for shares made by the plaintiff was not one made conditional upon or to the knowledge of the directors based upon any special or other representations made by Waithman. The application was not even to the knowledge of the directors induced by representations by Waithman, though even if it had been, whether that could in itself have been sufficient to bring the case within my fourth head, or entitle the plaintiff to rescind, I need not now inquire." This last case which the learned judge suggests and which he says is not one the effect of which he proposes to inquire into, is, however, a far clearer case than was *Karberg's Case*, for in that case, as we have seen, Kekewich, J., at the trial held that the directors had no knowledge that the application was based on any representations at all.

Further, during the course of the argument, Romer, J., said: "There [i.e., in *Karberg's Case*] the company was aware of the representations when the shares were allotted," but it is difficult to see from the report on what grounds he made this remark. The only material difference in the facts that appears from the report was that in *Karberg's Case* the prospectus was issued in the usual way by the promoter, while in *Lynde* v. *Anglo-Italian Hemp Spinning Co.* the representations were made after the incorporation of the company, but verbally and by persons who had no authority to make the representations, and it seems that the company in the former case can only be said to have known of the representations on the ground that a company must be taken to know of all the steps properly taken with a view to its own incorporation.

In *Collins* v. *Associated Greyhound Racecourses, Ltd.*, Luxmoore, J., dealing with these cases, refers to *Tamplin's Case*, and says that he was refused relief on the ground that the directors did not know that he applied on the faith of the draft prospectus and that the Court of Appeal, although they did not find that the directors did know, allowed the appeal on the ground that *Karberg's Case* applied. He points out that Romer, J.'s judgment in *Lynde* v. *Anglo-Italian Hemp Spinning Co.* was subsequent to the decision of the Court of Appeal in *Tamplin's Case* which was cited in argument in *Lynde's Case*. *Tamplin's Case* is only reported in the *Weekly Notes*, and for the purposes of the case held himself bound to hold that the report in the *Weekly Notes* was wrong and to accept Romer, J.'s decision in *Lynde's Case* as binding on him.

The position, therefore, is far from clear: it seems that *Lynde's Case*, as subsequently interpreted by the note in "Buckley," and in *Collins' Case*, is not to be reconciled with *Karberg's Case*. Nor is it clear what the effect is of an application which is expressed to be made on the basis of a prospectus issued by a company, when in fact it was induced by misrepresentations contained in a pre-incorporation prospectus of which the company has no knowledge, though it will presumably prove difficult in practice for directors to say at any rate in the case of underwriters that they did not know that the application was made on the basis of an underwriting proof even if issued before the incorporation of the company.

A Conveyancer's Diary.

[Contributed.]

I propose this week to deal with two questions which have been put to me by correspondents as having recently arisen in practice and caused them some doubts.

Annuity given to Trustee of a Will.

In the first case, so far as material, the testator appointed A his executor and trustee and gave him an annuity of £*x*. He then proceeded to give some legacies and to devise and bequeath his residue on the usual trusts for sale and conversion, and the payment of debts, expenses and legacies. He then settled the residuary proceeds of sale. The question is how the annuity is to be borne as between capital and income. Now, a distinction has to be drawn between a case of this sort, where the annuity is created by the will itself, and that where it was already in existence as a result of a covenant or disposition made *inter vivos*. In the latter case the annuity is a debt payable by instalments. Consequently it is payable out of capital, subject, however, to a contribution from income under the rule in *Allhusen* v. *Whittell*, L.R. 4 Eq. 295. This rule may be taken as having been established by *Re Perkins* [1907] 2 Ch. 596, and *Re Poyser* [1910] 2 Ch. 444, earlier cases to the contrary notwithstanding.

But in the case we are considering the annuity was created by the will. The question is what the gift really is. Is it a genuine annuity, in which case it is payable out of income in the ordinary way, or is it really a legacy to the trustee for his trouble, payable for convenience by instalments? If the latter it would come out of capital, as legacies are deductible under the terms of the will before ascertainment of the ultimate fund of which the life tenant is given the income. The merits may be thought to be about equally divided:

on the one hand it may be said that payments to trustees for their trouble are like testamentary expenses and so should come out of capital: on the other, it may be observed that the life tenant's income is collected by the trustee, and that while there is a life tenancy the annuity should come out of income as would the income fees of a trust corporation. Fortunately, however, the point is exactly covered by authority, for in *Scholefield* v. *Redfern*, 2 Dr. & Sm. 173, such a gift was held to be like any other annuity, and so to come out of income. Kindersley, V.-C., seems to have had no difficulty in arriving at this conclusion, in spite of the fact that in that case those who argued that the annuity should be paid out of capital had the additional point in their favour that the annuity was to run only for five years from the death, and so could easily be quantified as a gross sum; but "indeed," as the Vice-Chancellor said (p. 180), "to treat these gifts as legacies of gross sums would be substituting for what is natural and simple that which is purely artificial and complex, namely, that each trustee is to have five legacies of £400 each, the first legacy payable at the end of a year, the second payable at the end of the second year, and so on . . . He calls them annuities and distinguishes them from legacies. Why, then, is the court, for no reason that I can see, to introduce a complex idea of there being so many different legacies? Why is it to be done in this case more than in any other case of a gift of an annuity by will?"

It may be remarked that if the annuity is to be paid quarterly, as may well occur, there would be four times as many legacies; while if it is to go on so long as the trustee retains his trusteeship the total number of periodic legacies, and their aggregate value, are quite indefinite.

Conveyance to Joint Tenants.

At any time after 1925 "where a legal estate (not being settled land) is beneficially limited to or held in trust for any persons as joint tenants" it is, by L.P.A., s. 36 (1), to be held on the statutory trusts.

It is to be noted that this subsection looks to two sorts of cases, first, where the land is beneficially limited to the joint tenants, i.e., where there are persons as joint tenants both at law and in equity; second, where it is held in trust for the joint tenants, e.g. where the legal estate is conveyed to A on trust for B and C as joint tenants. In the former case the joint tenants themselves are the trustees for sale; in the latter, A is such a trustee. The latter case is, I think, sometimes overlooked, but it is with the former that we are here more concerned. What is the purchaser's solicitor to do if he is presented with a title depending on a conveyance in, say, 1920, to W, X, Y and Z "as joint tenants" *simpliciter*? Of course, if the four were, in fact, beneficial owners, title can be made by them as statutory trustees for sale; but if they were not so, there is no statutory trust. Indeed it is a very rare and strange thing for four persons to be beneficial joint tenants. If there are two joint tenants, and they are husband and wife, the balance of probability is that they are beneficially entitled as joint tenants. Alternatively, several sisters living together might easily be beneficial joint tenants; but it is very difficult to imagine any circumstances, other than ones in which there is some such family reason for desiring survivorship, in which survivorship is likely to be sought.

Quite the contrary: if one finds a conveyance to four, or even two, otherwise unconnected persons as joint tenants, the probability is that they are trustees of one sort or another. If so the purchaser cannot safely take a title from them without further inquiry, lest the case be one where the legal estate has passed to a tenant for life. If there is a conveyance of land before 1926 to trustees, and if that land was or became settled land on 1st January, 1926, the trustees no longer have the legal estate at all. Consequently, the purchaser's solicitor cannot comfort himself by thinking that he has no notice of the trusts: the legal estate itself vested even in an equitable tenant for life. Similar considerations apply both to a realty settlement and to a personalty settlement with power to invest in land, if the latter settlement came into operation before 1912 (L.P.A., s. 32).

The position is not the same if the conveyance to joint tenants occurred after 1926, in the case of a realty settlement, as the land will not have been conveyed to the trustees at all but to the tenant for life: nor in the case of a personalty settlement coming into operation after 1912, as L.P.A., s. 32, imposes a trust for sale: but inasmuch as any such body of trustees may be trustees of a personalty settlement coming into operation before 1912, which fact cannot be discovered unless the settlement is disclosed, inquiry should still be made in all such cases.

In short, a title depending on L.P.A., s. 36 (1), should never be accepted without further inquiry unless it appears on the face of the conveyance to the joint tenants that they were entitled both at law and in equity.

Landlord and Tenant Notebook.

Finality of Notice to Quit.

In the course of his judgment in *Davies* v. *Bristow, Penrhos College* v. *Butler* [1920] 3 K.B. 428, Shearman, J., said: "A notice to quit can be withdrawn at any time before the date fixed for the termination of the tenancy. But after the time has expired the lease is at an end and a landlord can no more waive his notice to quit than he can waive the effluxion of time."

The facts of the cases referred to are not of general importance, as they concerned an anomaly created by the Rent, etc. Restrictions Acts which, incidentally, has since been dealt with by one of the more recent of those enactments. But what is of general interest is the question whether the contrast suggested by the learned judge is of any useful importance. Are there any circumstances in which one can say that the consequences of "withdrawal" differ from those of what is called "waiver"? Or does the contrast merely serve to point out the inaccuracy of the latter expression from the purist's point of view?

The expression has certainly been current for centuries, and the immediate effects of conduct suggesting a change of mind have been illustrated by a number of authorities in which the question was consistently described as whether the notice to quit had been waived. To commence with *Doe d. Cheny* v. *Batten* (1775), 1 Cowp. 243; here the sequence of events was a notice to quit given by the lessor at Ladyday to expire at Michaelmas, ejectment proceedings commenced and pleaded to between Michaelmas and Christmas, "rent" paid at Christmas. Lord Mansfield directed the jury that the notice to quit would be "waived" if the rent were not only paid but also received as such, for the landlord would be entitled to rents and profits in respect of use and occupation. The question was whether he consented to the tenancy being *continued*. Then in *Zouch d. Ward* v. *Willingdale* (1790), 1 H. Bl. 311, when a landlord's notice to quit expired at Michaelmas but the tenant did not quit till the following February and the landlord levied distress for rent due at Christmas it was held that there was nothing to leave to the jury, for such an act as distraining was an unqualified confirmation of *the* tenancy. In *Goodright d. Charter* v. *Cordwent* (1795), 6 T.R. 219, it appeared that notice given to the tenant expired at Old Michaelmas 1792; six months later he paid a sum corresponding to the amount of a half-year's rent. It was left to the jury to determine the nature of the payment, and they found for the defendant. As Lord Kenyon, C.J., observed, a man cannot be both tenant and trespasser. But in *Doe d. Ash* v. *Calvert* (1810), 2 Camp. 387, the acceptance of a gale of "rent" by a banker's clerk who had been in the habit of

receiving such payments and who had not been told that notice to quit had been given and expired was held not to constitute a "waiver."

The above cases illustrate the possible consequences of a change of mind after notice to quit has become effective. But this may happen during the currency of the notice. It would seem that this was what the defence amounted to in *Whiteacre d. Boult* v. *Symonds* (1808), 10 Ea. 13, but the construction put upon the language used by the parties was that all the landlord had done (whether during the currency of the notice or after its expiration) was to say that the tenant might stay on till the property was sold—in other words, granted him a licence—and it had been sold. *Blyth* v. *Dennett* (1853), 13 C.B. 178, is more in point, for here, when served with a notice to quit the premises on Ladyday, 1851, by the plaintiff's son, the defendant said: "If I pay the rent, I suppose it will be all right," to which the son assented. The plaintiff subsequently demanded rent, before and after the notice expired. No point was taken by the plaintiff as to his son's authority, which does not matter for present purposes, but what is less fortunate for those purposes is that the defence appears to have limited itself to the contention that the demand of rent in respect of a period *after* the notice had expired "waived" that notice. The case thus comes under the same head as those discussed in the preceding paragraph. The decision was that a mere demand had not the effect contended for; but of the conversation it *was* said that all it meant was that the notice would not be insisted on if the rent were duly paid.

It was not till *Tayleur* v. *Wildin* (1868), L.R. 3 Ex. 303, that we really get clear authority on the effect of a change of mind made during the currency of a notice to quit. The defendant had guaranteed payment of the rent of a yearly tenancy, and when the tenant got into arrear the plaintiff, his landlord, served him with a notice to quit expiring in March, 1866. But in February the tenant found the money and the plaintiff agreed to "withdraw" the notice. When the tenant again defaulted and the defendant was sued on his guarantee, he successfully set up that this was not the tenancy of which he had guaranteed the rent.

The same sort of thing occurred in the case of *Freeman* v. *Evans* [1922] 1 Ch. 36, C.A., which illustrates other possible consequences. One of the defendants in that case was a tenant who had sub-let part of the demised premises to the other defendants, in breach of a covenant against alienation in the head lease. The sub-tenancy, it appears, was determinable by one quarter's notice. On the plaintiffs acquiring the reversion to the head term, they granted a new lease to the mesne tenant at an increased rent. The mesne tenant then endeavoured to get the sub-tenants to agree to a corresponding increase, but the latter at first refused, and the mesne tenants then gave them notice to quit. Thereupon they wrote "agreeing" to pay the increase asked for: the mesne tenant "confirmed" this next day; a week or so later the sub-tenants wrote that they took it that the last-mentioned letter automatically "cancelled" the notice to quit, and the mesne tenant wrote that it did, and that the sub-tenants "remained" as his tenants at the increased rent agreed upon.

The plaintiffs then sued for possession on the ground of forfeiture for breach of covenant and condition against alienation, and it was held that there was no answer to this claim. A new tenancy had been created, just as it had been in *Tayleur* v. *Wildin*, *supra*.

This being so, I cannot help suggesting that the passage quoted from the judgment of Shearman, J., in *Davies* v. *Bristow*, *Penrhos College* v. *Butler*, at the commencement of this article is open to the criticism of "division without distinction and distinction without difference." Indeed, when in *Tayleur* v. *Wildin*, *supra*, it was argued that the law laid down in *Blyth* v. *Dennett*, *supra*, did not apply, as the alleged waiver or withdrawal was said to have taken place after the notice to quit had expired, Kelly, C.B., observed that the facts differed, but the principle was the same. It was "clear that the party to whom it" (notice to quit) "is given is entitled to insist upon it, and it cannot be withdrawn without the consent of both. If that is so, then the consent of the parties makes *a new agreement*, and if there is a new agreement there is a new tenancy created to that effect on the expiration of the old term."

In one of his plays Mr. G. Bernard Shaw makes the point that it is, in fact, impossible for anyone to "withdraw" what he has said. The point is not a legal one, apology rather than agreement being contemplated, but the law discussed above at least suggests that it is as inaccurate, inadvisable, and misleading to speak of "cancelling" or "withdrawing" a notice to quit as it is to speak of "waiving" one. I am aware that A.H.A., 1923, s. 12 (1) (i), provides that compensation for disturbance shall not be payable under the section where the landlord has made to the tenant an offer in writing to withdraw the notice to quit and the tenant has unreasonably refused or failed to accept the offer, but the exact effect of this provision has yet to be decided. *Obiter*, it has, admittedly, been suggested that when the statute operates the acceptance of the offer would indeed be to restore the state of affairs as if nothing had happened—see *Re Perrett and Bennett-Stanford's Arbitration* [1922] 2 K.B. 592, C.A.—the interests of third parties not being affected.

Our County Court Letter.

THE LANDLORD AND TENANT ACT, 1927.

In *Salop County Council* v. *Garcia*, recently heard at Shrewsbury County Court, the claim was for possession of a shop and premises, £20 arrears of rent and £5 13s. 3d. mesne profits. The counter-claim was for compensation for disturbance and £6 10s. as the price of a new sun blind. The plaintiffs' case was that they had bought the premises in September, 1937, when the defendant had already had notice to quit from the previous owner. Fresh notice to quit was given, however, on the 21st March, 1938, expiring on the 24th June. The defence to the counter-claim was that the defendant had not been in personal occupation for five years. Therefore no claim arose under the Landlord and Tenant Act, 1927, s. 4 (1). The defendant admitted the amounts claimed, but contended that the previous landlord had agreed not to disturb him until 1941. His Honour Judge Samuel, K.C., gave judgment for the amounts claimed. As the defendant had obtained other accommodation, an order was made for possession by the 31st August, with costs. The counter-claim was dismissed, with costs to the plaintiffs.

LIABILITY FOR PRICE OF WIRELESS SET.

In a recent case at Lampeter County Court (*John Jones* v. *Evan Jones*) the claim was for £13 3s. 9d. as the price of a wireless set. The plaintiff's case was that he gave a demonstration at his shop of a wireless set, which the defendant purchased and took home. Following complaints of the reception of the Welsh programme, the plaintiff had the set adjusted by an expert. The set had a twelve-months' guarantee, and the plaintiff had not been asked to take it back. The defendant had stated that he was buying the set as a present for his daughter, and she had signed the form of acceptance. The defendant's case was that he accepted the set on trial. If it was unsatisfactory, the plaintiff was to take the set back. Owing to defects in reception, the defendant refused to sign the form, which was signed in his absence by his daughter. She was only aged twenty, and was not authorised by the defendant to sign on his behalf. The daughter was also registered as the owner with a company

interested in the set, and a letter from the company was the first intimation to the defendant that the acceptance form had been signed. His Honour Judge Frank Davies observed that the defendant had apparently been influenced by his daughter to buy the set for her. Judgment was given for the plaintiffs, with costs.

HALF COMMISSION MAN'S LIABILITY FOR LOSSES.

In *Wilson* v. *Edgar Henriques & Co.*, recently heard at the Liverpool Court of Passage, the claim was for £87 as the amount due to the plaintiff as a half commission man. The plaintiff had been a member of the Liverpool Stock Exchange from 1920 onwards, and gave up business on his own account in 1931. He then joined the defendants as a half commission man. The plaintiff's case was that, although he was entitled to a half-share of any commission earned by the defendants (in respect of any transactions on behalf of clients introduced by the plaintiff), the defendants were not entitled to debit him with half of the losses incurred by them in such transactions. The plaintiff contended that he had not agreed to be liable for such losses, and that there was no custom or usage to that effect which was legally binding upon him. The defendants admitted that the plaintiff was entitled to half commission, but they claimed a set-off in respect of half the losses, which the plaintiff had agreed to pay. Such agreement was either express, or was implied by the custom and usage of the Liverpool Stock Exchange. Evidence as to the existence of this custom was given by the vice-chairman and three members of the committee. The presiding judge, Sir W. F. K. Taylor, K.C., held that there was such a custom, and that his contingent liability thereunder had probably been mentioned to the plaintiff when the arrangement had been made for him to share the defendants' commission on business he might introduce. Judgment was given for the defendants, with costs. The position of half commission men was considered in *Sutton & Co.* v. *Grey* [1894] 1 Q.B. 285. It was there held that they were not partners of the stockbroker. The verbal agreement to share losses was admitted, but the defendant contended that it was unenforceable under the Statute of Frauds, s. 4. By that section a guarantee is required to be evidenced by a note or memorandum in writing. This contention failed, as the contract was held to be one of indemnity only.

Obituary.

Mr. A. M. GALER.

Mr. Allan Maxcey Galer, B.A. (Oxon), Barrister-at-Law, of King's Bench Walk, Temple, E.C., died at Dulwich, on Wednesday, 16th November. Mr. Galer was called to the Bar by the Inner Temple in 1897 and went the South-Eastern Circuit.

Mr. J. A. C. KEEVES.

Mr. Joseph Allan Coningsby Keeves, B.A., Barrister-at-Law, of Fig Tree Court, Temple, E.C., died in London on Saturday, 19th November, at the age of forty-eight. Mr. Keeves was educated at Caius College, Cambridge, and was called to the Bar by the Middle Temple in 1913.

Mr. E. W. TALBOT.

Mr. Ellis William Talbot, solicitor, senior partner in the firm of Messrs. Talbot & Painter, of Kidderminster, died on Thursday, 17th November, at the age of seventy-four. Mr. Talbot was educated at Brighton College, and was admitted a solicitor in 1887. He was Registrar of Kidderminster County Court from 1916 to 1926, and was a former member of Kidderminster Town Council and of Worcestershire County Council. He was secretary of Kidderminster Permanent Building Society.

Land and Estate Topics.

By J. A. MORAN.

So far this month, a large amount of business has been transacted in the market for real estate; the lots on offer, as a rule, were of a good class, and there was every reason, therefore, for investors to get busy. The speculators have had a long run; those who are most in evidence in the sale rooms, just now, are the people who want no excitement, being content with a safe and reasonable annual return on their savings. Many of those who are selling their small house property have War on the brain; nothing will convince them that their holdings will not be destroyed when bombs resume their offensive from the air.

In his Presidential Address to the members of The Surveyors' Institution, Sir Charles Bressey dealt mainly with the subject of roads, and this because the greater part of his working life, civil and military, had been spent in the Service. The task of the future, he said, is not merely the cutting of new roadways, but the re-planning, to the public advantage, of the areas lying within what he might term the "zone of influence" of each route. Such duties could, probably, be most suitably performed by an Improvement Trust, with few members but with ample powers to undertake the safeguarding and construction of new routes, and the acquisition of adjoining territory, with a view to securing recoupment by re-development of the most enlightened principles. He could imagine no loftier purpose to which the efforts of Chartered Surveyors could be directed than that of helping forward the broad measures of re-habilitation and salvage which the task of re-planning involved.

The annual dinner of the Auctioneers' Institute will be held at the Grosvenor Hotel on Thursday, 1st December.

Candidates for the Incorporated Society of Auctioneers 1939 Preliminary Examination are reminded that it is fixed for 4th and 5th January next. The closing date for the receipt of applications is 1st December.

Of interest to auctioneers and property owners as well as others was the decision of Judge David Davies, at Grays County Court, that a person who takes possession of a stray dog is liable for any damage which the dog may do: in the case under review a sum of £21 8s. was awarded for damage to sheep.

White Lodge, in Richmond Park, a former Royal residence, is to let. Built by George II for Queen Caroline, it has been the home of successive generations of The Royal Family. It was there that the Duke of Windsor was born.

The first of the Timber Development Association's "show houses," to be completed in the north of England, now on show, occupies a site of 2,100 yards, with a frontage of about 70 feet. Oak, pine, western red cedar, and elm have been used in the construction. There are four bedrooms, a lounge, dining room and kitchen, and the price, with three-quarters of an acre of land, is £2,600. It seems to me that the purchase money must come down a bit before there is a rush of competitors. The prejudice against the timber houses is dying out very slowly.

Alderman D. N. Royce, Chairman of Oakham Urban Council and the Parish Council which preceded it, for a continuous period of sixty-two years, has decided to retire. This well-known Chartered Surveyor and Fellow of the Auctioneers' Institute is to be congratulated on a great record.

The Governors of Charterhouse have given instructions for the letting on lease for a term of years of the Registrar's House in that ancient building. It is of seventeenth century architecture and contains many characteristic features. Although situated in the entrance court of the Charterhouse, the residence, though in the heart of London, is cut off from all traffic noises.

"Mansions for Sweeps" as the heading of a paragraph in a leading Sunday newspaper nearly took my breath away. On close inspection, however, I found the reference was to sweepstakes; so the fellow who relieves my chimney of its superfluous soot must be content with his usual villa residence.

Reviews.

A Manual of Farm Law. By N. H. Moller, M.A., LL.M. (Cantab.), Barrister-at-Law. 1938. Demy 8vo. pp. xliv and (with Index) 528. London: Stevens & Sons, Ltd.; Sweet & Maxwell, Ltd. £1 net.

This book is encyclopædic in its scope and comprises seventy-five titles in alphabetical order. Owing to the existence of other text-books on the subject, the law relating to agricultural holdings has not been dealt with separately, but is worked into the fabric of the remainder of the text. There is no separate heading relating to criminal law, but "Poaching" forms the subject of one title, and other criminal offences are mentioned in the appropriate places. The manual gathers together much legal material, in a form convenient to farmers and the expert advisers in the countryside. Ample provision is also made for the legal practitioner in the country, who will find chapter and verse in the cases cited. These are collected in a table giving about twelve hundred references. The latest statutes are also noticed, e.g., the Tithe Act, 1936, and the Livestock Industry Act, 1937. The farmer, no less than the manufacturer, is nowadays in contact with the law at many points, and this volume defines his position in a wide variety of situations.

Payne's Carriage of Goods by Sea. Fourth Edition, 1938. By John Samuel, M.A., of the Middle Temple, Barrister-at-Law. Demy 8vo. pp. xxiv and 157 (Index, 8). London: Butterworth & Co. (Publishers), Ltd. 8s. 6d. net.

"Payne's Carriage of Goods by Sea" has been a standard guide to students and the profession since 1914. Lucidity, precision and accuracy have earned a well-deserved popularity. The chapter upon "The Liability of a Shipowner" has been re-arranged in view of the Carriage of Goods by Sea Act, 1924, and the learned editor summarises with care (at p. 54) the effect of unjustifiable deviation which was discussed at length by the House of Lords in *Hain S.S. Co.* v. *Tate & Lyle* (1936), 2 All E.R. 597. More might be made in a subsequent edition of decisions such as *Stag Line* v. *Foscolo* [1932] A.C. 328, and *The Arpad* [1934] P. 189, which contain noteworthy expositions of the principles, the one of deviation, and the other of damages where the goods have been resold before delivery. The preliminary chapter on "Commercial Practice" and the appendices containing forms of a Bill of Lading and of a Charterparty in use to-day will be of value to all for reference and for "refreshing one's memory": indeed, an additional value to the whole book.

Books Received.

The Coal Act, 1938. By Peter G. Roberts, Barrister-at-Law, Inner Temple. 1938. Demy 8vo. pp. viii and (with Index) 324. London: Wildy & Sons. Price 7s. 6d.

The Journal of Comparative Legislation and International Law. Third Series, Vol. XX, Part IV. November, 1938. Edited by F. M. Goadby, D.C.L. London: Society of Comparative Legislation. Price 6s.

The Law Relating to Competitive Trading. By Dorothy Knight Dix, B.A., of the University of London, and of the Inner Temple and South-Eastern Circuit, Barrister-at-Law. 1938. Demy 8vo. pp. xx and (with Index) 224. London: Sweet & Maxwell, Ltd. 15s. net.

To-day and Yesterday.

Legal Calendar.

21 November.—Those who like to regard the Spanish Anarchists as the worthy allies of constitutional democracy would do well to study the antecedents of the movement and some of its martyrs. Take Salvador Franch who was executed at Barcelona on the 21st November, 1894. Though trembling with fear, he employed the one and a half minutes that he was on the scaffold, before the screw of the garotte ended his life, in shouting insults against religion. A vast crowd had gathered to witness the scene, for his particular democratic gesture (one of many at that time) was to throw a bomb into the stalls of the Liceo Theatre during a performance of "William Tell," killing twenty-three people. His body was left on the scaffold till sunset.

22 November.—On the 22nd November, 1830, Henry Brougham became Lord Chancellor, though the equity lawyers had serious doubts whether his brilliant versatility could adapt itself to the mysteries of their calling: "If the Lord Chancellor only knew a little law," said Sugden, "he would know a little of everything." His self-confidence was unbounded and he wrote and spoke as a teacher on every subject under the sun. It was once said of him: "There go Solon, Lycurgus, Demosthenes, Archimedes, Sir Isaac Newton, Lord Chesterfield and a great many more in one post-chaise." Hardly anything he wrote remains readable to-day, and strangely enough his contributions to legal development were the most durable of his works.

23 November.—On the 23rd November, 1805, Mr. Justice Johnson of the Irish Common Pleas appeared at the bar of the King's Bench, at Westminster, charged with a libel on the Lord Chancellor. The Attorney-General expressed his regret at accusing a learned judge of being an anonymous libeller against the Government of his Sovereign, an offence foreign to "every principle which should guide the defendant's high and dignified station." The defence contested the identification of the handwriting, but the jury after a quarter of an hour's deliberation found the judge guilty. Next year he retired from the Bench with a pension of £1,200 and his younger brother was appointed to succeed him.

24 November.—On the 24th November, 1810, the case of the Hottentot Venus came before the King's Bench. This "female native of South Africa remarkable for the formation of her person" was being exhibited in London when certain well-intentioned members of the African Institution raised the question whether she was not being kept unwillingly in custody. An impartial commission, having interviewed her, were satisfied that she was exhibited by her own consent and was receiving a share of profits. All this is reported in 13 East. 195. Shows of this kind remained popular, and one of the earliest recollections of a well-known Victorian "silk" was that at five years' old he rode on the back of a Hottentot Venus at a fair in Hyde Park.

25 November.—On the 25th November, 1858, legal history was made in the Court of Queen's Bench when Comrooden Tyabjee, a Mohammedan, having regularly served his articles in London, was admitted to practice as an attorney. He took the oath of allegiance on the Koran and after he had done so Lord Campbell, the Lord Chief Justice, wished him success in his profession.

26 November.—On the 26th November, 1613, Sir Henry Hobart succeeded the great Coke as Chief Justice of the Common Pleas. During the twelve years that he continued in that place he won a great reputation for integrity, independence and soundness of judgment. When he died he was mourned as "a most learned, prudent, grave and religious judge" and "a great loss to the public weal."

27 November.—On the 27th November, 1729, Sir William Thomson, Recorder of London, became a Baron of the Exchequer. He died ten years later.

The Week's Personality.

Legal history furnishes a good many examples of pachyderms and among the most successful of these Sir William Thomson has an honourable place. His first considerable achievement was to become Recorder of London in 1714 by the casting vote of the Lord Mayor. By his address of congratulation to George I on his accession he collected a knighthood, though the good king who spoke no English understood not a word. In 1717 he became Solicitor-General. At that time the granting of charters of incorporation to joint stock companies was bringing the Law Officers a rich harvest, but Thomson fell out with his colleague, Attorney-General Lechmere, over the division of the spoils and ended by publicly accusing him of taking bribes over and above the fees to which he was entitled, adding in a burst of indignation that he had auctioned charters at his chambers. A commission of inquiry found the charges false, scandalous, malicious and utterly groundless and Thomson was ignominously dismissed from office. But instead of wilting with shame he kept his seat in Parliament and his Recordership, and four years later had so far recovered himself as to obtain a £1,200 annuity and a patent of precedence in all the courts after the Law Officers. In 1726 he acquired another place as Cursitor Baron of the Exchequer. In 1729 he became a serjeant and a judicial Baron. But still till death he clung to the plurality of his Recordership.

Cupid in Court.

In the course of an amusing speech at the Cymmrodorion Society's dinner, Lord Sankey recalled his experience as a judge with the first woman juror, and also an occasion when a young woman witness who, ordered by him to answer a question of cross-examining counsel, tearfully exclaimed: "Oh, dear, I don't know the answer!" "Those," he said "were the two occasions on which I came nearest to getting married." He may have been nearer than he thought, for that was the way Lord Stowell was caught in the matrimonial noose. He met his fate at the Old Bailey while trying the young Marquis of Sligo for having caused two seamen to desert the Royal Navy and join the crew of his yacht in the Mediterranean. In terms of parental reproof he sentenced him to four months in Newgate and a £5,000 fine, and at the end of his lecture he was surprised and gratified to receive a complimentary note from the prisoner's attractive young mother, who had sat in court throughout the hearing, expressing the wish that her son could always have so wise a counsellor. Four months' later, despite the twenty odd years between their ages, they became man and wife. She was extravagant and worldly, he careful and retiring, and during their short married life she took a deliberate delight in teasing and humiliating him. It was more than he could have hoped for when she died suddenly during a journey through Germany four years after their union.

No Point Made.

In addressing himself to a remark made by Farwell, J., a counsel in the Chancery Division was recently incautious enough to speak of "the next point your lordship made." Thereupon, the learned judge repudiated with some force and asperity the idea that he so far forgot judicial detachment as to "make points." Clearly his lordship is in no danger of being given the title of "judge advocate" bestowed by the Bar on Chief Justice Best in token of his too personal intervention in the cases he tried. More eminent judges than Best have fallen into the fault. A recent book of reminiscences has recalled the duels that used to take place in the Lords between Lord Halsbury and Lord Herschell. Counsel standing silent at the Bar was the mere pretext for their exchanges. Halsbury: "What would you say to this proposition?" Herschell: "Wouldn't the answer to that be such and such?" Halsbury: "In that case wouldn't you say so and so?" Herschell: "I suppose your argument would then be this." And so on.

Notes of Cases.

Judicial Committee of the Privy Council.

Kumar Kamalaranjan Roy *v.* Secretary of State for India in Council; Same *v.* Same.

Lord Wright, Lord Romer, Lord Porter, Sir Shadi Lal and Sir George Rankin. 17th October, 1938.

Land—Settlement of Estates—Costs of—Apportionment among Under-tenants—Sale of Estate for Recovery of Arrears of Land Revenue—Annulment of Under-tenures by Purchaser of Estate—Undischarged Liability of Under-tenants for Settlement Costs—Whether Recoverable from Purchaser—Sale of Land for Arrears of Revenue (Bengal) Act (XI of 1859), s. 37—Bengal Tenancy Act (VIII of 1885), s. 114.

Consolidated appeals from a decision of the High Court, Fort William, Bengal.

The appellant was the purchaser under the Sale of Land for Arrears of Revenue (Bengal) Act, 1859, of an estate in respect of which a settlement had been completed shortly beforehand. The expenses of the settlement had duly been apportioned *inter alia* on the *patnidars* or under-tenants, some of whom had, at the date of the purchase, still failed to pay the amounts due from them. Section 37 of the Act of 1859 entitles a purchaser of an entire estate under the Act to acquire the estate free from encumbrances imposed on it after the settlement, and "to avoid and annul all under-tenures and forthwith to eject all under-tenants. . . ." By s. 114 (1) of the Bengal Tenancy Act, 1885 (which section occurs in the chapter dealing with the preparation of a record-of-rights in respect of land, and with the settlement of rents) ". . . the expenses . . . [of settlement] . . . in any estate . . . (including expenses . . . incurred . . . before or after the preparation of the record-of-rights . . .) shall be defrayed by the landlords, tenants and occupants. . . ." The purchaser, on the demand of the Government, paid under protest the sums due from various under-tenants whose tenures he had annulled, and, subsequently, brought two actions to recover those various amounts. The subordinate judge dismissed the actions, his decision being reversed by the district judge. The High Court reversed that decision and ordered dismissal of the actions. The purchaser now brought these appeals against that decision.

Lord Wright, delivering the judgment of the Board, said that the courts below had proceeded on r. 414 of the Bengal Survey and Settlement Manual, 1917, which provided: "If before the amounts are collected, a landlord or tenant dies or transfers or abandons his estate or tenancy . . . recovery may be made from the person in possession of the former holder's interest." It was enough to say that that rule did not purport to deal with annulment of under-tenures. Abandonment could not be construed as including annulment. There was, in any event, no statutory authority to justify such a provision in the rule, which would accordingly be invalid. The rule therefore did not apply to this case. The respondents sought to uphold the appeal before their lordships on two alternative grounds: (*a*) that the apportionment was a charge on the under-tenant's interest in the land; or (*b*) that the liability imposed by s. 114 of the Act of 1885 was not on those who were landlords, etc., at any specified time, but on those who were landlords, etc., from time to time so long as any

part of the apportionment was still outstanding. As to contention (*a*), it was unnecessary to decide whether the apportionment constituted a charge on the land, or on the under-tenant in respect of the land, because, assuming that it were a charge on the land, that charge must necessarily cease and determine when the under-tenure ceased to exist, as it did on its annulment by the purchaser under s. 37 of the Act of 1859. Contention (*b*) involved, among other difficulties, reading the words "from time to time" into s. 114 of the Act of 1885. The machinery provided by the section included the issue of a certificate to a particular person. The proceedings laid down in s. 114 (1) and (3) pointed to the certificate as creating a debt against the specific person against whom the certificate was filed. Such provisions were inconsistent with a shifting liability passing from the certificate debtor to any new landlord to whom the estate might pass. It might be that this was a *casus omissus*, but the contention failed, and the appellant was entitled to succeed, and to recover the sums paid by him under protest.

COUNSEL: *A. M. Dunne*, K.C., *Sir T. J. Strangman*, and *C. Bagram*, for the appellant; *J. Millard Tucker*, K.C., and *J. M. Pringle*, for the respondent.

SOLICITORS: *W. W. Box & Co.*; *The Solicitor, India Office.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Court of Appeal.

In re **Vaux; Nicholson** *v.* **Vaux.**

Greene, M.R., Scott and Clauson, L.JJ.
11th November, 1938.

WILL—CONSTRUCTION—TRUST—DEALINGS WITH PROPERTY TO BE "WITHIN THE LIMITATIONS PRESCRIBED BY LAW"—EFFECT.

Appeal from Simonds, J. (82 SOL. J. 215, 332).

A testator who died in 1925 left a widow, two sons and two daughters, all of whom attained twenty-one years. A son died in 1936. He appointed two trustees and left his real estate and the residue of his personal estate on trust for sale, conversion and investment. The income thereof was to be paid to his wife during her life or widowhood. From her death or re-marriage investments to the value of £20,000 were to be set aside on the usual trusts for each of the daughters. The expression "my trustees" in the will was defined as including, where the context permitted, the trustees or trustee for the time being, whether original or substituted. By cl. 11, the ultimate residuary gift: "As to the rest, residue and remainder of my residuary trust fund I declare that my trustees shall hold the same upon trust to pay and apply both the income and the capital thereof in such shares and proportions as they may in their absolute and uncontrolled discretion think fit to or for the benefit of all or any one or more of my children or the issue of any deceased child of mine and I declare that my trustees may from time to time within the period of twenty-one years from my decease accumulate the surplus of any income of my residuary trust fund not paid or applied under the preceding clause of this my will by investing the same and the resulting income thereof to the intent that the accumulations shall be added to the residuary trust fund and follow the destination thereof with liberty nevertheless for the trustees at any time or times to resort to the accumulations of any preceding year or years and apply the same as part of my residuary trust fund." By cl. 12: "Having the fullest confidence in my trustees, I hereby authorise and empower them to deal with the capital and income of my residuary trust fund and pay away and deal with the same in all respects for the benefit and provision of my children and grandchildren as they may think best or most expedient and to act in all respects as I could have done, if living, save only that such dealings with the residuary trust fund and the income and accumulations thereof shall be within the limits prescribed by law." The trustees were now those appointed by the will together with an additional trustee. Simonds, J., held that the residuary trust fund was void and devolved as on an intestacy. The testator's son appealed.

CLAUSON, L.J., delivering the judgment of the court, said that it had been admitted that cl. 11 must be treated as void. "My trustees" were defined as including the trustees for the time being, whether original or substituted, and so there was no such limitation on the period within which the discretion was to be exercised as there would have been had it been vested in the named persons alone. Thus the trust was one under which an interest could be created at a date more than twenty-one years after any life in being at the testator's death and was bad. His lordship referred to *In re Hargreaves*, 43 Ch. D. 401. As to cl. 12 the judge had held that it did not cut down or limit cl. 11 so as to import into the trust thereby created a provision that any dealings with the residuary trust fund thereunder should be within the limits of the rule against perpetuities. In that the court agreed with him. But he had also held that cl. 12 could not be construed as an independent effective provision. In that the court parted company with him. The effectiveness of cl. 12 to create a valid trust or power could be tested by its language as an independent clause. The classes of beneficiaries mentioned in cl. 11 and cl. 12 were different. On the construction of the will cl. 12 must be taken as conferring authority and power on the trustees for the time being not confining the meaning to the trustees named in the will. The question arose whether on the construction of cl. 12 as a whole, including the saving words as to "the limitations prescribed by law," the power was not confined to a period which must necessarily terminate within the term of a life or lives in being and twenty-one years afterwards. The saving words were equivalent to a direction that the beneficial interest vested in the beneficiary by any exercise of the power was to vest in that person if at all within the period prescribed. In the case of a special power such as this the validity of the interest appointed thereunder must be tested by asking whether, if the interest had been conferred by the testator in his will, it would have been obnoxious to the rule against perpetuities. The saving words were equivalent to a proviso that no interest must be appointed under the power which if given by the will would have been obnoxious to the rule. The result of that was to restrict the exercise of the power to a period falling within the limits of the rule. It had been argued that the saving words were ineffective as being too vague and uncertain (see *In re Moore* [1901] 1 Ch. 936), but they were not void for uncertainty in this context. The validity of any interest created could be tested without any element of uncertainty, the test being whether if the interest as appointed had been given by the will it could have been predicated of it at the date of the testator's death that it must necessarily vest if at all within the period of a life or lives then in being and twenty-one years after. Nothing in *In re Thompson* [1906] 2 Ch. 199, threw any light on this case as there was here no question of the exercise of a power by an ambulatory document. By cl. 12 a valid power was conferred on the trustees.

COUNSEL: *Christie*, K.C. and *J. Strangman*; *Dinckwerts*; *Daynes*, K.C., and *Winterbotham*; *Grant*, K.C., and *J. L. Stone.*

SOLICITORS: *Patersons, Snow & Co.*, for *Runson & Co.*, of Sunderland.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

On Wednesday, 30th November, Mr. Charles Latham, Chairman of the Finance Committee of the London County Council, will give an address on "The Rating of Site Values," at the headquarters of the Incorporated Society of Auctioneers and Landed Property Agents, 34 Queen's Gate, S.W.7. The meeting will commence at 7.15 p.m. and light refreshments will be served, free of charge, from 6.30 p.m. The attendance of members and guests is cordially invited.

High Court—Chancery Division.

In re Buchanan-Wollaston's Conveyance; Curtis *v.* Buchanan-Wollaston.

Farwell, J. 10th November, 1938.

COVENANT—LAND CONVEYED TO JOINT TENANTS—DEED OF COVENANT EXECUTED BY THEM—RESTRICTIONS ON USER—ONE JOINT TENANT WISHING TO EXECUTE TRUST FOR SALE—APPLICATION TO COURT—LAW OF PROPERTY ACT, 1925 (15 Geo. 5, c. 20), ss. 35, 36.

On the 22nd August, 1928, a piece of land was conveyed to B.W., F.C., C.S. and T.B. in fee simple as joint tenants. All were owners and occupiers of houses in the immediate vicinity. They provided the purchase money in different proportions. On the 17th September, 1928, they entered into a deed of covenant reciting that the land was purchased to secure that it should not be used in a way which might be a nuisance or annoyance or might cause detriment or depreciation in value of their properties. By cl. 1 it was agreed that it should not be so used. By cl. 4 an area was defined within which no building should be erected, save by the unanimous consent of the parties. By cl. 5 all profits arising out of the land were to belong to the parties in proportions corresponding to their contributions to the purchase money and outgoings were to be borne in the same proportions. By cl. 6 provision was made for the determination by voting of questions arising with reference to the land. By cl. 7 provision was made for the transfer of the interests of the parties. In 1930 C.S. transferred her interest in the land to F.C. In 1932 T.B. died. F.C. afterwards sold his house and removed from the neighbourhood. He desired to have the land sold and the proceeds divided, but B.W., who was still the owner of property adjoining the land, refused to agree because any sale, unless made on terms preventing building, might be detrimental to his land. By this summons F.C. sought the assistance of the court in selling the land. The executors of T.B. joined as defendants supported B.W.

FARWELL, J., said that the effect of the conveyance was that the land vested in the purchasers on the statutory trusts defined by s. 35 of the Law of Property Act, 1925, since it created a trust for sale by virtue of s. 36. The plaintiff was willing that the land should be sold subject to proper restrictions, but contended that there being a statutory trust for sale he was entitled to insist on a sale though his co-trustee objected. But the court would not assist the execution of the trust at the instance of one who would thereby be doing something directly in breach of his contractual obligations. A court of equity would not give the plaintiff relief if he was not doing equity. The summons should be dismissed, with costs.

COUNSEL: *Roger Turnbull; G. Uppjohn.*

SOLICITORS: *Grundy, Izod & Co.*, for *Wiltshire, Sons & Jordan*, of Lowestoft; *George Thatcher & Son*, for *Sherwood & Co.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

In re Sanger; Taylor *v.* North.

Simonds, J. 17th November, 1938.

ADMINISTRATION—WILL—RESIDUE TO BE DIVIDED AMONG CERTAIN LEGATEES—DIRECTION TO PAY ALL DUTIES "OUT OF MY ESTATE"—DEATH OF SOME LEGATEES BEFORE TESTATRIX—LAPSE OF LEGACIES—INCIDENCE OF DUTIES—ADMINISTRATION OF ESTATES ACT, 1925 (15 Geo. 5, c. 23), s. 34 (3).

A testatrix who died in 1936 bequeathed the residue of her estate after the payment of certain legacies on trust for sale and to divide the proceeds equally among five named legatees. She then directed "that all duties payable on my death shall be discharged out of my estate." Two of the residuary legatees having predeceased the testatrix, their legacies lapsed and were undisposed of. The gross value of the estate was over £95,000. The question arose whether the following payments should be met out of the shares of the estate as to which the testatrix died intestate or out of the estate generally before division into shares (*a*) pecuniary legacies; (*b*) estate duty on personal estate; (*c*) legacy duty on the lapsed legacies; (*d*) legacy duty on the residuary estate including the lapsed legacies; (*e*) funeral, testamentary and administration expenses and debts.

SIMONDS, J., said that the undisposed of shares devolved as on an intestacy. They were "property undisposed of by will" within cl. 1 of Pt. II of the First Schedule to the Administration of Estates Act, 1925, and so under s. 34 (3) were primarily applicable "subject to the provisions contained in the will" towards the discharge of funeral, testamentary and administration expenses and debts and liabilities. The question was whether any provisions in the will altered the order of administration otherwise applicable under the Act, so far as items (*b*), (*c*) and (*d*) were concerned. It was conceded that nothing in the will altered the primary liability of the undisposed of shares to payment of items (*a*) and (*e*). His lordship considered *In re Lamb* [1929] 1 Ch. 722; *In re Petty* [1929] 1 Ch. 726; and *In re Worthington* [1933] 1 Ch. 771, and said that this will contained a direction that the duties payable on the testatrix's death should be payable out of her estate and if the same effect were given to that as was given to a substantially similar direction in *In re Tong* [1931] 1 Ch. 202, he would have to say that this provision overrode the statutory order and he did not think he could do so. *In re Kempthorne* [1930] 1 Ch. 268, might be distinguished on the ground that a different effect might be given to a testator's language according to whether he directed (*a*) payment of debts and distribution of residue or (*b*) distribution of his estate subject to and after payment of debts. This case fell into the former category. The statutory order applied and the undisposed of share of residue must first be used to discharge the items in question.

COUNSEL: *A. H. Droop; E. Holland; Hon. Benjamin Bathurst; Danckwerts.*

SOLICITORS: *Wilkinson, Howlett & Moorhouse; Taylor & Humbert.*

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

Shenton *v.* Tyler.

Simonds, J. 22nd November, 1938.

HUSBAND AND WIFE—INTERROGATORIES—WIDOW INTERROGATED—COMMUNICATIONS BETWEEN HERSELF AND HER LATE HUSBAND—WHETHER PRIVILEGED—EVIDENCE AMENDMENT ACT, 1853 (16 & 17 Vict., c. 83), s. 3.

In this action the plaintiff's pleaded case was that one T., who died on the 6th January, 1937, had in his lifetime created a secret trust in her favour telling his wife, the defendant, that he wished her to pay £2 a week for life out of his estate to the plaintiff, that the defendant had so promised and that on the faith of that promise he had left the defendant all his residuary estate. From a week after his death till the 8th March, 1937, the plaintiff had received £2 a week, but after that she had received nothing. She claimed a declaration that a valid secret trust had been created. The defence pleaded that the money had been paid voluntarily without obligation by way of almsgiving. The plaintiff sought to administer the following interrogatories: "(1) Did not your late husband communicate to you during his lifetime his wish that you should during the lifetime of the plaintiff pay to her . . . the weekly sum of £2 . . . ? . . . (3) Did you not promise your late husband that you would during the lifetime of the plaintiff pay to her . . . the weekly sum of £2 . . . ?"

SIMONDS, J., said that the interrogatories were objected to on the ground that any communication by the husband

to his wife or by her to him was protected by the old common law of inviolability of any confidence passing between husband and wife: *Monroe* v. *Twisleton*, Peake Add. C. 219; *Doker* v. *Hasler*, Ry. & M. 198; *O'Connor* v. *Marjoribanks*, 6 Jur. 509). The common law principle seemed to be absolute. The intimate relation of husband and wife was not dissolved by death. A widow or a divorced woman was an admissible witness, but neither was compellable as to matters which had passed between herself and her husband during their married life. The Evidence Amendment Act, 1853, s. 3, must be read with ss. 1 and 2, and did not so modify the old rule as to create an exception in the case of a widow. The defendant's objection must be upheld. She was entitled to the costs of the application in any event.

COUNSEL: *Roger Turnbull*, for the defendant: *G. D. Johnston*, for the plaintiff.

SOLICITORS: *John B. Borer*, for *Loseby, Son & Hammond*, of Leicester; *Robinson & Bradley*, for *Evan, Barlow, Son & Fordham*, of Leicester.

[Reported by FRANCIS H. COWPER, Esq., Barrister-at-Law.]

High Court—King's Bench Division.

Lockett and Another *v.* A. & M. Charles Ltd.

Tucker, J. 14th October, 1938.

CONTRACT—WARRANTY—RESTAURANT—DEFECTIVE FOOD—HUSBAND AND WIFE—WIFE POISONED—NO EVIDENCE OF ANY SPECIAL ARRANGEMENT WITH REGARD TO ORDERING—CONTRACT BETWEEN EACH CUSTOMER AND RESTAURANT PROPRIETOR—LIABILITY.

Action for damages for breach of contract and/or warranty.

The plaintiff, Lockett, and his wife, while on a motor journey, stopped at a hotel owned by the defendants, and had luncheon. They ordered whitebait. The husband spat out his first mouthful because he disliked the taste. The wife, however, swallowed one mouthful. Later, as they proceeded on their journey, the wife was taken ill, and suffered from food poisoning. His lordship found as a fact that she was poisoned as a result of eating the whitebait. There was no evidence to show exactly what happened with regard to the ordering. There was nothing to indicate to those in charge of the restaurant that the plaintiffs were husband and wife. It was simply a case, his lordship found, where a man and a woman went to a hotel for a meal, there being no evidence that either was in charge of the proceedings. It was agreed that the husband paid for the meal, and his lordship held that he might assume that Lockett asked his wife what she would have, and that she accordingly ordered her meal.

TUCKER, J., said that the first question was whether Mrs. Lockett was entitled to recover damages for general pain and suffering, or whether only the special damages incurred on her behalf by her husband, some £99, could be recovered. As to the wife's position with regard to warranty, there being no allegation of negligence, either plaintiff could only recover by establishing a contract with the defendants. It was contended for the defendants that, where a man and a woman, whether husband and wife or not, visited a restaurant, and the man ordered the meal, *primâ facie* the only inference was that the man alone made himself liable in contract to the proprietor. Every case, counsel had agreed, must depend on its own circumstances. There might be a case where it was apparent that the woman intended to pay, and was, as it were, in charge of the proceedings. Counsel also agreed that, where a man ordered a private room at a hotel, entertained a party, and made arrangements beforehand, he was unquestionably the only person contracting with the hotel, his guests being in no contractual relationship with the proprietor. But counsel argued that, in the ordinary case where a man and a woman visited a hotel, it was naturally assumed that the man was paying for the meal, and that he was making the contract, unless there were evidence to the contrary. On that point the evidence in the present case was neutral. Counsel for the plaintiffs was, in his (his lordship's) opinion, right when he contended that, when persons visited a restaurant and ordered food, they were making a contract of sale exactly as when they entered a shop and ordered goods. The inference was that the person who ordered the food in a restaurant *primâ facie* made himself or herself liable to pay for it: and when two people, whether or not they happened to be husband and wife, visited a hotel, each ordering food, then, as between those persons and the hotel-proprietor, each was incurring liability for the food which he ordered, whatever might be the arrangement between the visitors themselves. On the facts of the present case there was a contract to be implied from the conduct of the parties between the wife and the defendants when she ordered and was supplied with the whitebait. The matter had been discussed in *Regensteiner* v. *Canuto's Restaurant Ltd.* (*Hales & Piper, Third Parties*) (*The Times*, 6th May, 1938), where Hilbery, J., although not finding it necessary to make it the basis of his decision, expressed the view that, in the absence of special circumstances, the wife was entitled to recover in contract. Where there was no evidence to indicate to the proprietor of a restaurant what the relationship between the parties was, and yet one or other took on himself the position of a host entertaining his guests, the proper inference of law was that the person who ordered and consumed the food was liable to the proprietor to pay for it. If that were so, it followed that there was an implied warranty to that person that the food was fit for consumption. Lockett was accordingly entitled to recover special damages as claimed, and Mrs. Lockett £100 general damages. [In the subsequent third party proceedings his lordship held that the defendants, although without necessarily being themselves to blame, had failed to discharge the burden of proving that the defect in the whitebait was due to the third party's negligence.]

COUNSEL: *J. W. Morris*, K.C., and *B. B. Stenham*, for the plaintiffs; *M. R. Fox Andrews*, for the defendants.

SOLICITORS: *Hugh-Jones & Flinn; Joynson-Hicks & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Vernon *v.* Findlay and Another.

Lewis, J. 2nd November, 1938.

MASTER AND SERVANT — CONTRACT — ENGAGEMENT OF EMPLOYEE FOR UNSPECIFIED PERIOD—WHETHER YEARLY HIRING—CONTRACT NOT IN WRITING—NOT ENFORCEABLE—STATUTE OF FRAUDS (29 Car. II c. 3), s. 3.

Action for damages for breach of contract.

On the 1st December, 1936, the defendants, one Findlay and one Vaughan, engaged the plaintiff as sales manager for a company to be formed to market typewriters. The plaintiff was to begin work on the 1st January, 1937, and was to receive £350 a year as salary, in addition to expenses and commission. In fact no company was ever formed, and the plaintiff brought this action claiming a sum composed of commission and salary at £350 a year from the 1st January to the 16th April, 1937. The defendants pleaded *inter alia* that the agreement was not to be performed within a year of its making, and that it was therefore unenforceable by virtue of s. 4 of the Statute of Frauds because not in writing.

LEWIS, J., said that, in the 250 years which had passed since the passing of the Statute of Frauds, there had been innumerable decisions on the words of s. 4. In *Hanau* v. *Ehrlich* [1912] A.C. 39, the different classes of case were pointed out which had been decided under the section. Lord Alverstone's analysis at p. 42, did not, in terms, cover the present case, when he said that the one class of cases decided that, if there were no mention of time, and the time were uncertain, the agreement was not within the statute.

the other class decided that, if the time mentioned were more than a year, but there were power to determine, the agreement was within the statute. In one sense the time in the present case was uncertain because no time was mentioned. In *Hanau* v. *Ehrlich*, *supra*, it was held that an agreement for two years' service, but subject to six months' notice, was within the statute. If, therefore, there were a contract which was not to be performed within a year of its making by reason that a time larger than a year were specified in it, it did not become a contract outside the statute merely because it contained a provision which, being acted on, would result in the contract's being discharged within the year, for example, a provision for three or six months' notice. It was argued that the contract in the present case was not to be performed within the year; and if, being made on the 1st December, 1936, to begin on the 1st January, 1937, it was to last for a year, it was clearly not to be performed within a year of its making. Counsel for the plaintiff referred to *De Stempel* v. *Dunkels*, 82 SOL. J. 51; 158 L.T.R. 85, as showing that a contract such as the present was not within the statute because not a yearly hiring. In his (his lordship's) opinion there had been some misapprehension about what was being considered in *De Stempel* v. *Dunkels*, *supra*. The point there being considered was the contention that, if A engaged B for a year, and they allowed that contract to run on from year to year, it was impossible to say that, each year, there was a contract for a year which terminated automatically at the end of the year. That was quite different from the question for him (Lewis, J.)—namely, whether a contract for an undetermined period was one for a year. His Lordship referred to the passage from Greer, L.J.'s judgment, at p. 89, and from that of Slesser, L.J. at p. 91. In his (Lewis, J.'s) opinion, following what was said in *De Stempel* v. *Dunkels*, *supra*, and the earlier cases, the contract here, being for an indefinite period at a salary of £350 a year, the position on the authorities, if the matter rested there, was that the contract was presumed to be a general hiring of the plaintiff's services for one year. That was borne out by *Fawcett* v. *Cash* (1834), 5 B. & Ad. 904, and *Lilley* v. *Elwin* (1848), 11 Q.B. 742. Such a contract could not be terminated by either party before its conclusion at the end of the year. The exception to that rule was that if there were an express stipulation or a custom to that effect, the contract could be terminated before the end of the year. The contract was unenforceable, and there must be judgment for the defendants.

COUNSEL: *B. L. A. O'Malley*, for the plaintiff; *W. Bennett*, for Findlay; *C. Gallop* and *Russell Lawrence*, for Vaughan.

SOLICITORS: *Scott Duckers & Co.*; *Gamlen, Bowerman and Forward*; *Forsyte, Kerman & Phillips*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Fisher *v.* W. B. Dick & Co. Ltd.

Branson, J. 21st November, 1938.

MASTER AND SERVANT — CONTRACT — ENGAGEMENT OF EMPLOYEE FOR UNSPECIFIED PERIOD—WHETHER YEARLY HIRING.

Action for damages for wrongful dismissal.

The plaintiff entered the defendant company's employment in November, 1933, and worked for them until the 20th December, 1937, when they gave him three months' salary in lieu of notice he left them. In September, 1933, the plaintiff had seen an advertisement by the defendants that they required an engineering salesman. The plaintiff was engaged at a salary of £400, together with expenses (the agreement being in writing and dated the 15th November, 1933) to act on the defendants' sales staff. Having left the defendants' employment, he brought this action, claiming *inter alia* a year's salary in lieu of notice, while allowing the defendants credit for the three months' salary which they had paid him.

BRANSON, J., said that the plaintiff contended that his contract with the defendants constituted a yearly hiring; in other words, that the contract was terminable only at the expiration of a year (and perhaps not then without reasonable notice), on the date when a complete year of the employment was at an end. Whether that was so or not depended in the main on the circumstances in which the plaintiff came to be employed. The plaintiff urged that the circumstances were such as in law to create a yearly hiring. The law might now be taken from *De Stempel* v. *Dunkels*, 82 SOL. J. 51; 158 L.T. 85. The matter there under consideration was whether a hiring was to be held to be a yearly hiring or an indefinite hiring terminable by reasonable notice at any time. His lordship then cited the passage from the judgment of Greer, L.J., 158 L.T., at p. 91, pointing out that the presumption of a yearly hiring was rebuttable, and said that, although those observations perhaps went further than the question before the Court of Appeal actually necessitated, he (Branson, J.) considered himself bound by them. They appeared to state the common-sense of the matter in its relation to agreements which were not between agricultural labourers and employers, and with regard to which there was not the same compelling reason for treating the contract as a yearly hiring—rather the contrary. He (his lordship) was satisfied in the present case that neither party thought that the agreement was for one year, or an agreement which, if neither party said anything, would terminate at the end of a year by the mere lapse of time. It was an agreement which both parties thought would go on for an indefinite time, and probably, as in fact it did, for some years at least. His lordship, having held on this and other points that the plaintiff had failed to show that he was entitled to anything more than the three months' salary in lieu of notice which he had received, said that there must be judgment for the defendants.

COUNSEL: *N. Ker Lindsay* (*B. B. Gillis* with him) for the plaintiff; *John Foster*, for the defendants.

SOLICITORS: *Percy Bono & Griffith*; *Linklaters & Paines*.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Jackson *v.* Hayes Candy & Co. Ltd.

du Parcq, L.J. (sitting as an Additional Judge). 22nd November, 1938.

MASTER AND SERVANT — CONTRACT — ENGAGEMENT OF EMPLOYEE FOR UNSPECIFIED PERIOD—WHETHER YEARLY HIRING.

Action for damages for wrongful dismissal.

In a letter dated the 31st December, 1931, from the defendant company to the plaintiff, confirming a verbal arrangement, the company agreed to employ him as from the 20th December as first man in their cotton department at £340 a year with commission on certain terms. The plaintiff had at that date already been in the company's service for many years. On the 7th August the defendants wrote to the plaintiff giving him one month's notice, but tendering him a sum which included three months' salary. The plaintiff then brought this action, the material one of his contentions being that the agreement in the letter of December, 1931, was one from year to year as from the 20th December, 1931, terminable by notice (as to the length of which various contentions were raised) expiring on the 19th December. The defendants contended that they were entitled to terminate the contract as they had done, and that the plaintiff was only entitled to reasonable notice, which they put at one month, or, alternatively, at three months.

DU PARCQ, L.J., said that the plaintiff contended that he ought to have been given a longer notice, and that, inasmuch as his employment was what the law called a yearly hiring, it could only be terminated by a notice ending with a year of the contract. That contention raised an interesting point. The law with regard to the duration of contracts between

master and servant was set out in "Halsbury's Laws of England," Hailsham ed., vol. 22, p. 144, para. 235. It was there stated *inter alia* that the presumption of a yearly hiring was one which could be rebutted, and which must be considered in connection with the circumstances of each case. That paragraph was not authoritative, but it had in terms been approved by Slesser, L.J., in *De Stempel* v. *Dunkels*, 82 SOL. J. 51: 158 L.T. Rep. 85, at p. 91. While he believed that statement of the law to be correct, he (du Parcq, L.J.) thought that it would probably surprise many people, as it was not always recognised by business employers. It was no doubt true that, from time to time, reasons had been found, and sometimes rather eagerly looked for, by the courts for saying that that presumption was rebutted. But the presumption still existed, and the law was still as set out in the passage in "Halsbury." That had been recognised recently in *Vernon* v. *Findlay* (SOL. J. report above) 55 T.L.R. 77. Counsel for the defendants drew attention to a passage from Greer, L.J.'s judgment in *De Stempel* v. *Dunkels*, 158 L.T. Rep., at p. 89, with which Scott, L.J., expressed agreement. Greer, L.J., dealt very fully with *Buckingham* v. *Surrey & Hants Canal Co.* (1882), 46 L.T. 885, a decision for a long time regarded as correct. His lordship having referred to *Cayme* v. *Allan Jones & Co.*, 35 T.L.R. 453, where the same view of the law was taken, said that Greer, L.J.'s statement that the presumption which was applied to the engagement of the engineer in *Buckingham* v. *Surrey & Hants Canal Co.*, *supra*, ought not to have been so applied, was a very serious statement for the consideration of any court dealing with this matter. He (his lordship), after considering the judgments in *De Stempel* v. *Dunkels*, *supra*, had come to the conclusion that neither Greer, L.J., nor Scott, L.J., intended to say that there was no longer any presumption of a yearly hiring; nor did they intend to say that the presumption applied only to the contracts for the employment of agricultural workers. Whatever Greer, L.J.'s complaint of the decision in *Buckingham* v. *Surrey & Hants Canal Co.*, *supra*, he (du Parcq, L.J.) did not think that Greer, L.J., or Scott, L.J., would dispute the statement of the law in "Halsbury," *supra*. Even if those lords justices meant to hold that the decision in *Buckingham* v. *Surrey and Hants Canal Co.*, *supra*, was wrong, he (du Parcq, L.J.) was not sure that, on the ordinary rules on which the courts based themselves, it could be said that the Court of Appeal had so held otherwise than by *dicta* not essential for the matter which was before them for decision. Accordingly the plaintiff was entitled to remain in his employment until the expiry of his year on the following 19th December, and there must be judgment in his favour for the appropriate sum.

COUNSEL: *C. N. Shawcross*, for the plaintiff: *Robert Fortune* and *C. G. Thompson*, for the defendants.

SOLICITORS: *W. A. Robinson*; *Leonard Tubbs & Co.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Probate, Divorce and Admiralty Division.

Marthews *v.* Marthews.

Langton, J.
14th June, 20th October, 8th November, 1938.

DIVORCE — DESERTION — EARLIER PROCEEDINGS FOR JUDICIAL SEPARATION—PREVIOUS PETITION FILED WITHIN STATUTORY PERIOD — ABANDONMENT — CURRENCY OF DESERTION ARRESTED BY PETITION—MATRIMONIAL CAUSES ACT, 1937 (1 Edw. 8 and 1 Geo. 6, c. 57), ss. 2 (*b*) and 6.

This husband's undefended petition for dissolution of marriage on the ground of desertion raised the question whether desertion continued to run after the filing by the petitioner of a petition for judicial separation which was not proceeded with. The petitioner established inception of desertion in October, 1934, but in February, 1937, he had filed a petition for judicial separation which was not proceeded with, having been dismissed on the petitioner's own application the day before the filing of the present petition.

LANGTON, J., after stating the facts and reviewing the judgments of Bargrave-Deane, J., and of the Court of Appeal in *Stevenson* v. *Stevenson* [1911] P. 191, said that the points of substance put by Mr. Temple were (i) that the existence of such a petition for judicial separation was evidence only of a desire that the wife should keep away, and could be rebutted by the other evidence in the case; (ii) that, whereas the court in *Stevenson* v. *Stevenson*, *supra*, were dealing with the Act of 1857, where the words employed were "without excuse," the words in the Act of 1937 were "without cause"; (iii) that a distinction could and ought to be founded upon what Sir Boyd Merriman, P., in the recent case of *Herod* v. *Herod*, 82 SOL. J. 665, had called a "subjective" rather than an "objective" construction of "desertion without cause." He, his lordship, had given all these points the closest and most partial consideration, since he had been most anxious to assist Mr. Marthews out of his difficulty if he could feel that it was right and permissible to do so. He was sadly afraid that the more closely they were examined the more flimsy they became. As regards the first point, it was true that Bargrave-Deane, J., in his judgment, said, at p. 192, that the prayer for judicial separation was: "... the strongest piece of evidence you can have that she herself wished the state of cohabitation to be put an end to." Also, it was agreed that the petitioner in the present case did not read, and certainly did not intend, the meaning of the words contained in the prayer. If, therefore, the prayer could be treated as evidence only, there was certainly strong evidence in the present case to rebut the effect of the prayer. On the other hand, it was perfectly clear that Sir H. H. Cozens-Hardy, M.R., did not put the matter upon evidence at all. He was laying down as a matter of law that no one could invoke the assistance of the court, with all that such assistance connoted, during the pendency of the petition and at the same time claim that during the period that the assistance was being invoked the other spouse was guilty of desertion. When one bore in mind that, as soon as petitions, for either divorce or judicial separation, were presented to the court, there was a temporary, and quite considerable change in the duties appertaining to the marriage state, there was nothing surprising in the result that such petitions should be held to create an interregnum, at least, in the running of the period of desertion. That this conception was not absent from the minds of those responsible for the Matrimonial Causes Act, 1937, was, he thought, clear from the wording of s. 6 (3), which provided as follows: "For the purposes of any such petition for divorce, a period of desertion immediately preceding the institution of proceedings for a decree of judicial separation or an order under the said Acts having the effect of such a decree shall, if the parties have not resumed cohabitation and the decree or order has been continuously in force since the granting thereof, be deemed immediately to precede the presentation of the petition for divorce." It would be observed that, in order to obtain the advantage of being able to count the period of desertion which had preceded the institution of proceedings for judicial separation, it was there made necessary that the parties should not have resumed cohabitation, and that the decree should have been continuously in force since the granting thereof. It was difficult to believe that the legislature in considering this matter were not attempting to confirm, rather than to override, the principle laid down in *Stevenson* v. *Stevenson*, *supra*. The point made upon the words "cause" and "excuse" was quite obviously untenable when one found the two words both used in the same signification in the Act of 1857 (*vide Wickins* v. *Wickins* [1918] P. 265, at p. 270). Finally, the attractive point argued upon the analogy of the judgment of Sir Boyd Merriman, P., in *Herod* v. *Herod*, *supra*, that the words "desertion without cause" must be

considered as used in a subjective sense, could have no force in the face of the understanding of the judgment of Sir H. H. Cozens-Hardy, M.R., in *Stevenson* v. *Stevenson*, *supra*. He regretted, therefore, that he must hold the present case to be ruled by the judgment of the Court of Appeal in *Stevenson* v. *Stevenson*, *supra*, and the petition failed.

COUNSEL: *R. J. A. Temple*, for the petitioner.

SOLICITORS: *J. D. Langton & Passmore.*

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

Walton *v.* Walton.

Henn Collins, J. 10th November, 1938.

DIVORCE—DESERTION—PETITION DISCLOSING PREVIOUS PETITION WITHIN THREE YEARS—REFUSAL OF CERTIFICATE THAT PLEADINGS IN ORDER.

Summons adjourned into court.

This was an appeal from the refusal of the registrar to a grant of a certificate that the pleadings were in order in the following circumstances. The petition, being one for dissolution on the ground of desertion for three years immediately preceding presentation of petition, disclosed the fact that an earlier petition for dissolution on the ground of adultery had been filed by the petitioner within the statutory period and was later abandoned, thus preventing the desertion from running for the requisite time.

HENN COLLINS, J.: In this case, the refusal of the registrar to grant his certificate that the pleadings were in order was grounded on the fact that the petition alleging desertion for three years next preceding June, 1938, when the present petition was filed, disclosed that in March, 1937, the petitioner had filed a petition founded on adultery, which had been dismissed on 25th May, 1938, on the petitioner's application. The point was ably argued on behalf of the petitioner by Mr. Schapiro. He contended that the filing of the petition in March, 1937, had not necessarily put an end to the desertion, but that the question whether or not it did so was to be decided upon the facts of the case, and not as a matter of law, and that therefore the suit should not be stopped *in limine* by the refusal of a certificate. Since the matter was argued before me, judgment has been given by Langton, J., in *Marthews* v. *Marthews* (reported above). I can find no material distinction between that case and this. Whether the intervening petition were for judicial separation, as in *Marthews* v. *Marthews*, *supra*, or for divorce, as in this case, its effect would be to suspend the legal obligation upon the spouses of living together. There can in law be no desertion so long as that legal obligation is in abeyance. This result flows merely from the presence of a petition upon the file, and not from, nor from the absence of, any reactions it may have had upon the alleged deserter, nor would it be altered by any proof of such reactions, or by the absence of them. In other words, the consequence flows as a matter of law. In those circumstances, the registrar was right in dealing with it as a matter of pleading, and the appeal must be dismissed.

COUNSEL: *L. B. Schapiro*, for the petitioner.

SOLICITORS: *Joynson-Hicks & Co.*

[Reported by J. F. COMPTON-MILLER, Esq., Barrister-at-Law.]

Early records of the Borough of High Wycombe, dating back to the early thirteenth century, are to be published by High Wycombe Borough Council, says *The Times*. High Wycombe is one of the oldest boroughs in the country—the charter was granted in 1237—and the decision to collate the records and to publish them in volume form has been reached in consequence of the discovery in a High Wycombe solicitor's storeroom of ancient ledgers dealing with the town's progress. The ledgers were presented to the Corporation by Mr. J. C. Parker. The number of volumes printed will be limited to 300, half of which will be retained by the Records Branch of Buckinghamshire Archæological Society, which is to bear part of the expense.

Parliamentary News.

Progress of Bills.

House of Lords.

Bastardy (Blood Tests) Bill.
Read First Time. [23rd November.

Limitation Bill.
Read Second Time. [22nd November.

Ministry of Health Provisional Order (Mid-Staffordshire Joint Hospital District) Bill.
Read Second Time. [17th November.

Solicitors Amendment (Scotland) Bill.
Read First Time. [22nd November.

Wild Birds (Duck and Geese) Protection Bill.
Read First Time. [25th November.

House of Commons.

Expiring Laws Continuance Bill.
Read Second Time. [22nd November.

Haile Selassie, Emperor of Ethiopia (Property) Bill.
Read First Time. [22nd November.

Housing (Financial Provisions) (Scotland) Bill.
Read Second Time. [22nd November.

Pensions Acts (Amendment) Bill.
Read First Time. [22nd November.

Prevention of Fraud (Investments) Bill.
Read Second Time. [21st November.

Workmen's Compensation Bill.
Second Reading negatived. [18th November.

Questions to Ministers.

MATRIMONIAL CAUSES ACT.

Mr. SORENSEN asked the Minister of Health whether he is aware of the difficulties that have arisen in connection with the Matrimonial Causes Act through the failure or refusal of a mental hospital visiting committee to safeguard a medical superintendent by giving him instructions respecting the answering of reasonable inquiries respecting divorce proceedings; and whether he will take steps to avoid any such difficulties in future?

Mr. BERNAYS: The Board of Control have suggested to the Mental Hospitals Association that the position of the Medical Superintendent might be safeguarded if the Visiting Committee give him definite instructions to answer reasonable inquiries. My right hon. Friend is not, however, empowered to give Visiting Committees any direction in this matter.

[22nd November.

Societies.

Hampshire Incorporated Law Society.

ANNUAL MEETING.

The forty-seventh annual meeting of the Hampshire Incorporated Law Society was held at the South-Western Hotel, Southampton, on Wednesday, the 2nd November, Mr. L. F. Paris (Southampton), the retiring President, being in the chair.

The minutes of the previous annual general meeting having been taken as read and duly signed, Mr. R. C. White (Winchester) was elected a new member of the Society.

The adoption of the balance sheet was proposed by the President and seconded by Mr. A. C. Hallett (Southampton) and duly carried.

In presenting the annual report of the committee, the President called special attention to the position of affairs under the Poor Persons Procedure and pointed out that mainly owing to the passing of the Martimonial Causes Act of 1937, the number of applications received by the committee between the 1st January, 1938, and the 31st August, 1938, amounted to 300, as against an average number for twelve monthly periods during the past five years of 168, more than 100 per cent. increase. He stated that it was quite obvious that it would be a very long time before these applications and any further applications could be dealt with, as it had been found impossible in past years to keep up to date with the number of certificates granted. Mr. G. H. KING (Portsmouth), Vice-President, thought that the Poor Persons Committee should be very careful to see that no certificates were granted to applicants who were not strictly entitled thereto under the rules and expressed the view that the great majority of the public did not realise that solicitors

and barristers were doing this work entirely gratuitously and that many applicants were under the impression they were entitled to the certificates as of right and that solicitors should put aside their ordinary work for the benefit of the Poor Persons' work.

The retiring President then proposed the election of Mr. G. H. King (Portsmouth) as President for the ensuing year and referred to the fact that Mr. King was well known throughout the length and breadth of the county and that the Society could be in no safer hands than his for its future welfare. This nomination was seconded by Mr. V. E. G. Churcher, who made reference to his long personal association and friendship with Mr. King, the proposition being carried with acclamation. The new President, being duly invested, suitably returned thanks.

On the proposition of Mr. A. L. Bowker (Winchester), seconded by Mr. A. C. Hallett (Southampton), Mr. T. E. Brown (Winchester) was elected Vice-President for the ensuing year.

Messrs. C. F. Hiscock (Southampton), J. G. Stanier (Winchester), C. H. S. Blatch (Lymington), W. H. Abbott (Southampton) and R. C. Brooks (Basingstoke), were elected members of the committee.

Messrs. H. White (Winchester) and W. H. Abbott (Southampton) were re-elected Honorary Auditors.

Mr. L. F. Paris (Southampton) was re-elected Hon. Secretary and Hon. Treasurer and Mr. C. G. A. Paris, Assistant Hon. Secretary.

Messrs. A. C. Hallett (Southampton), L. N. Blake (Portsmouth) and L. F. Paris (Southampton) were re-elected representatives on the Board of Legal Studies.

Mr. H. White (Winchester) then gave a report on the work of the Solicitors' Benevolent Association during the past year. He gave particulars of the amounts which had been granted to dependents of Hampshire solicitors and referred to the fact that Hampshire was among the first six societies with the highest percentage of members of the Association and strongly stressed the point that although the Association now had quite a good income, there was still need for further increase and he hoped that as many members as possible would be willing to give the Association the benefit of refund of income tax by signing a deed of covenant to pay their subscription for the next seven years.

Mr. White informed the meeting that he was pleased to hear that it was suggested he should be nominated as Chairman of the Association for 1940.

The new President then addressed the meeting, giving a most amusing description of his work as an advocate for many years and relating many personal incidents which had taken place in connection with cases in which he was concerned. On the proposition of Mr. C. F. Hiscock (Southampton), seconded by Major Bullin (Portsmouth), a hearty vote of thanks to the President for his address was passed unanimously.

On the proposition of Mr. A. C. Hallett (Southampton), seconded by Mr. H. White (Winchester), Major R. Bullin (Portsmouth) was unanimously elected a trustee of the Ford Trust in the place of Mr. L. Warner (Fareham) who had resigned, and a cordial vote of thanks was passed to Mr. L. Warner for his services as a trustee since the inauguration of the scheme.

FORD TRUST PRIZE.

At a meeting of the Trustees of the Ford Scheme, being a trust founded by the late Charles Ford, under which a prize is awarded in each year to the articled law clerk who, having been articled in Hampshire, should, in the opinion of the Trustees, on the result of the Solicitors' Final Examination in that year, be the most worthy of clerks so articled, it was unanimously decided to award the prize for the year ending 31st August last equally between Mr. Harold Douglas Swales, who was articled to Mr. C. N. Powell, and Mr. G. A. Turner, both of the firm of Messrs. J. M. B. Turner & Co., of Bournemouth, and who obtained Second-Class honours in the November Examination; Mr. George Edward Twine, M.A., who was articled to Mr. R. R. Geach of the firm of Messrs. Burley & Geach, of Petersfield, who also obtained Second-Class honours in the same examination, and Mr. D. H. Blunden, who was articled to Mr. J. A. Kingdon, of Basingstoke, and who obtained Second-Class honours in the June Examination.

The Hardwicke Society.

A meeting of the Society was held on Friday, 18th November in the Middle Temple Common Room, the President, Mr. Lewis Sturge in the chair. Mr. J. E. Harper moved: "That this House would welcome a Ministry of Justice." Mr. A. E. Hunter opposed. There also spoke Mr. C. O. Cummins, Mr. R. H. Hunt (Hon. Sec.), Mr. W. Alston Turnbull, Miss Mary Hynes, Mr. M. M. Cochrane, The President (having vacated the chair), Mr. E. J. P. Cussen, Mr. J. A. Petrie (Ex-Pres.), Mr. Norman Edwards (Hon. Treas.) The Hon. Mover having replied, the House divided, and the motion was lost by one vote.

United Law Society.

At a meeting of the United Law Society, held in the Middle Temple Common Room, on Monday, 21st November, Mr. Peter Proud proposed: "That this House would view the disappearance of the lay magistrate from our legal system with approval." Mr. G. R. Smart opposed. Messrs. F. R. McQuown, P. H. Gaskell (Visitor), A. E. Hunter, C. H. Oakley, E. D. Smith, R. E. Rimmer, R. Walters and O. T. Hill, also spoke. After Mr. Proud had replied the Motion was put to the House and was lost by two votes.

University of London Law Society.

The University of London Law Society held a Professors' Evening at the University, Gower Street, on Tuesday, 22nd November. The motion was: "It is better to have loved and lost than never to have loved at all." Proposed by Professor H. Potter, seconded by Mr. A. Gilbert; opposed by Professor H. Jolowicz, seconded by Mr. S. Davies. There also spoke Messrs. Sacker, F. E. C. Wood, Band, and Finer. The motion was carried by an overwhelming majority.

The Union Society of London.

A debate was held in the Middle Temple Common Room on Wednesday evening, 23rd November, the president, Mr. Hubert Moses, was in the chair, and the following motion: "That the emancipation of women has failed in its purpose," was proposed by Mr. Hurle-Hobbs and opposed by Miss D. Knight Dix. Other speakers were Messrs. Winslow-Moses, Russell-Clarke, Orme, Hunter, Depinna, Meyler Symmons, Philpot, Bassett, Beg, Starkey, Grier, Baker, Mail, Misses Garvey and Thomas and Mrs. Moses. Ladies were guests of the Society on this occasion. The motion was lost by seven votes.

The Legal Musical Society.

On the 21st November, the second concert of the forty-sixth season of the Legal Musical Society was held at the Victoria Hall, Bloomsbury Square. The Hon. Mr. Justice Simonds presided.

The President, Mr. J. A. B. Townsend, M.B.E., proposed the chairman's health, and referred to the good fellowship that for forty-six years had existed at these social functions between the Bench, the Bar and the clerks engaged in the legal profession.

Mr. Justice SIMONDS expressed the great pleasure it gave him to preside, and added that he hoped the Society would continue for many years to carry on the social side of this great profession.

An excellent programme, arranged by Mr. Charles W. Holland, was enjoyed by a very large audience.

The next concert is to be held on Monday, 23rd January, 1939, at which the Hon. Mr. Justice Morton has kindly consented to preside. Tickets and full particulars as to membership can be obtained from the Honorary Secretary, Mr. Frank J. Pickett, 5, Crown Office Row, Temple, E.C.4.

Law Students' Debating Society.

At a meeting of the Society held at The Law Society's Court Room on Tuesday, 15th November (chairman, Mr. B. W. Main), the subject for debate was "That the case of *De Stempel* v. *Dunkels*, 54 T.L.R. 289, was wrongly decided." Mr. F. Whitworth opened in the affirmative. Mr. N. J. Highwood opened in the negative. Miss J. L. Kirkhope seconded in the affirmative. Mr. C. W. Denniss seconded in the negative. The following members also spoke: Messrs. H. Schadtler, G. D. Roberts, J. M. Shaw and H. J. Dowding. The motion was lost by one vote. There were thirteen members and three visitors present.

At a meeting of the Society held at The Law Society's Court Room, on Tuesday, 22nd November (chairman, Mr. E. V. E. White), the subject for debate was: "That this House deplores Football." Mr. J. R. Campbell Carter opened in the affirmative; Mr. B. W. Main opened in the negative. The following members also spoke: Messrs. H. Schadtler, H. J. Dowding, M. Foulis, W. G. Weller, J. M. Shaw, W. M. Pleadwell, Q. B. Hurst, L. J. Jackson and C. A. Simkins. The opener having replied, the motion was carried by one vote. There were fifteen members and two visitors present.

Legal Notes and News.

Honours and Appointments.

The King has approved the appointment of Mr. JAMES DALE CASSELS, K.C., to be a Commissioner of Assize to go the Northern Circuit (Manchester). Mr. Cassels will sit to assist Mr. Justice Tucker and Mr. Justice Croom-Johnson.

Notes.

The Lord Chancellor announces that the offices of the Supreme Court will be closed on Saturday, the 24th, and Tuesday, the 27th December, 1938.

The thirty-third festival dinner of the Solicitors' Managing Clerks' Association will be held at the Wharncliffe Rooms, Hotel Great Central, N.W., on Thursday, 1st December, at 6.45 p.m. for 7 o'clock.

The King, at Buckingham Palace, last Tuesday received in audience Mr. Justice Oliver and Mr. Justice Stable, who kissed hands on their appointment as judges and who each received a knighthood.

The annual dirner of the Society of Clerks of the Peace of Counties and Clerks of County Councils was held last Wednesday at Claridge's, when the chairman of the society, Sir George Etherton, presided. The Lord Chief Justice of England, Lord Hewart, attended.

A white paper issued recently (Cmd. 5871) shows that during the year ended 31st July, 1938, four Commissioners of Assize were appointed by the Lord Chancellor at a total cost of £1,903 5s. 8d., including £564 12s. 7d. for travelling and subsidence allowances and fees for marshals.

Bankruptcies and deeds of arrangement in England and Wales during 1937 numbered 4,753, it is disclosed in a blue book issued recently by the Board of Trade (H.M. Stationery Office, price 9d.). This figure was a reduction of ninety-four on the previous year. The estimated liabilities were £8,918,865, an increase of £1,425,012 and the estimated assets £2,887,817, an increase of £361,473.

Wills and Bequests.

Mr. Arthur Edward Barfield, solicitor, of Chalfont St. Giles, left £36,758, with net personalty £34,140.

Mr. Lewis Emanuel Emmet, solicitor, of Sheffield, left £17,265, with net personalty £15,159.

Mr. Charles Walker Holmes, solicitor, of New Broad Street, E.C., left £11,987, with net personalty £11,901.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT No. I.	GROUP II. MR. JUSTICE LUXMOORE. Witness Part I.	MR. JUSTICE FARWELL. Non-Witness.
	Mr.	Mr.	Mr.	Mr.
Nov. 28	Andrews	Blaker	*Hicks Beach	Jones
,, 29	Jones	More	*Andrews	Ritchie
,, 30	Ritchie	Hicks Beach	*Jones	Blaker
Dec. 1	Blaker	Andrews	Ritchie	More
,, 2	More	Jones	Blaker	Hicks Beach
,, 3	Hicks Beach	Ritchie	More	Andrews
	GROUP II. MR. JUSTICE MORTON. Witness Part II.	MR. JUSTICE BENNETT. Witness Part I.	GROUP I. MR. JUSTICE CROSSMAN. Witness Part II.	MR. JUSTICE SIMONDS. Non-Witness.
	Mr.	Mr.	Mr.	Mr.
Nov. 28	*Andrews	*Ritchie	Blaker	More
,, 29	*Jones	*Blaker	More	Hicks Beach
,, 30	*Ritchie	*More	Hicks Beach	Andrews
Dec. 1	*Blaker	*Hicks Beach	Andrews	Jones
,, 2	*More	*Andrews	Jones	Ritchie
,, 3	Hicks Beach	Jones	Ritchie	Blaker

*The Registrar will be in Chambers on these days, also on the day when the Court is not sitting.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 8th December 1938.

	Div. Months.	Middle Price 23 Nov. 1938.	Flat Interest Yield.	‡ Approximate Yield with redemption
ENGLISH GOVERNMENT SECURITIES			£ s. d.	£ s. d.
Consols 4% 1957 or after	FA	107¾	3 14 3	3 8 5
Consols 2½%	JAJO	72	3 9 5	—
War Loan 3½% 1952 or after ...	JD	99½	3 10 6	—
Funding 4% Loan 1960-90	MN	109½	3 13 3	3 7 6
Funding 3% Loan 1959-69	AO	95⅝	3 2 10	3 4 9
Funding 2¾% Loan 1952-57	JD	93⅝	2 18 10	3 4 3
Funding 2½% Loan 1956-61	AO	88½	2 16 8	3 5 2
Victory 4% Loan Av. life 21 years ...	MS	108¼	3 13 11	3 8 10
Conversion 5% Loan 1944-64 ...	MN	110⅜	4 10 3	2 13 6
Conversion 3½% Loan 1961 or after	AO	99¾	3 10 2	—
Conversion 3% Loan 1948-53 ...	MS	100	3 0 0	3 0 0
Conversion 2½% Loan 1944-49 ...	AO	97½	2 11 3	2 15 10
National Defence Loan 3% 1954-58	JJ	98	3 1 3	3 2 8
Local Loans 3% Stock 1912 or after	JAJO	85	3 10 7	—
Bank Stock	AO	330½	3 12 7	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	81½	3 7 6	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	87	3 9 0	—
India 4½% 1950-55	MN	111½	4 0 9	3 4 10
India 3½% 1931 or after	JAJO	91½	3 16 6	—
India 3% 1948 or after	JAJO	77½	3 17 5	—
Sudan 4½% 1939-73 Av. life 27 years	FA	105	4 5 9	4 3 8
Sudan 4% 1974 Red. in part after 1950	MN	105½	3 15 10	3 8 8
Tanganyika 4% Guaranteed 1951-71	FA	107	3 14 9	3 5 9
L.P.T.B. 4½% "T.F.A." Stock 1942-72	JJ	104½	4 6 1	2 18 4
Lon. Elec. T. F. Corpn. 2½% 1950-55	FA	90½	2 15 3	3 4 9
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	101½	3 18 10	3 17 6
Australia (Commonw'th) 3% 1955-58	AO	85½	3 10 2	4 1 5
*Canada 4% 1953-58	MS	108½	3 13 9	3 5 5
*Natal 3% 1929-49	JJ	99	3 0 7	3 2 6
New South Wales 3½% 1930-50 ...	JJ	94½	3 14 1	4 1 8
New Zealand 3% 1945	AO	88	3 8 2	5 4 8
Nigeria 4% 1963	AO	107½	3 14 5	3 10 10
Queensland 3½% 1950-70	JJ	92½	3 15 8	3 18 4
*South Africa 3½% 1953-73	JD	100½	3 9 8	3 9 2
Victoria 3½% 1929-49	AO	93½	3 14 10	4 5 0
CORPORATION STOCKS				
Birmingham 3% 1947 or after ...	JJ	84	3 11 5	—
Croydon 3% 1940-60	AO	94	3 3 10	3 8 0
*Essex County 3½% 1952-72 ...	JD	101	3 9 4	3 8 2
Leeds 3% 1927 or after	JJ	83	3 12 3	—
Liverpool 3½% Redeemable by agreement with holders or by purchase...	JAJO	97½	3 11 10	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	70½	3 10 11	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	82½	3 12 9	—
Manchester 3% 1941 or after ...	FA	83	3 12 3	—
Metropolitan Consd. 2½% 1920-49 ...	MJSD	96	2 12 1	2 18 7
Metropolitan Water Board 3% "A" 1963-2003	AO	85½	3 10 2	3 11 7
Do. do. 3% "B" 1934-2003 ...	MS	86½	3 9 4	3 10 7
Do. do. 3% "E" 1953-73 ...	JJ	96	3 2 6	3 3 10
*Middlesex County Council 4% 1952-72	MN	106	3 15 6	3 9 0
* Do. do. 4½% 1950-70	MN	110	4 1 10	3 9 4
Nottingham 3% Irredeemable ...	MN	83	3 12 3	—
Sheffield Corp. 3½% 1968	JJ	101½	3 9 0	3 8 5
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture ...	JJ	101½	3 18 10	—
Gt. Western Rly. 4½% Debenture ...	JJ	110½	4 1 5	—
Gt. Western Rly. 5% Debenture ...	JJ	122½	4 1 8	—
Gt. Western Rly. 5% Rent Charge ...	FA	118½	4 4 5	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	108	4 12 7	—
Gt. Western Rly. 5% Preference ...	MA	84	5 19 1	—
Southern Rly. 4% Debenture ...	JJ	102½	3 18 1	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	106½	3 15 1	3 11 9
Southern Rly. 5% Guaranteed ...	MA	114½	4 7 4	—
Southern Rly. 5% Preference ...	MA	94½	5 5 10	—

* Not available to Trustees over par.
‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.